

No. 12769 *3670*

United States
Court of Appeals
for the Ninth Circuit.

CLARENCE C. CAMINOS,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court of the
Territory of Hawaii

FILED

FEB 23 1951

PAUL R. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

No. 12769

United States
Court of Appeals
for the Ninth Circuit.

CLARENCE C. CAMINOS,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court of the
Territory of Hawaii

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Assignment of Errors.....	178
Citation	185
Clerk's Certificate, Supreme Court.....	192
Cost Bond	182
Indictment Cr. No. 19015.....	3
Indictment Cr. No. 19018.....	10
Judgment on Writs of Error.....	176
Minutes of Clerk of First Circuit Court Cr. 19015 and 19018.....	13
Minutes of Clerk of Supreme Court of Terri- tory of Hawaii.....	154
Names and Addresses of Attorneys.....	1
Notice of Appeal	185
Opinion and Decision of Supreme Court of Territory of Hawaii, Filed August 28, 1950	158
Order Allowing Appeal.....	184
Order Extending Time for Record.....	191
Petition for Appeal.....	177
Praeclipe for Transcript of Record.....	187

	INDEX	PAGE
Reporter's Transcript.....		61
Exchanges Between Court and Counsel....		143
Testimony of:		
Au, Paul		61
Clark, William K.....		73
Loo, Lawrence Fat.....		88
Mikami, Richard Kazuo.....		93
Priopios, Catalino		140
Rodenhurst, Thomas C.....		84
Tantog, Jose		132
Statement of Points and Designation of Parts of Record.....		193

NAMES AND ADDRESSES OF ATTORNEYS

FRED PATTERSON, ESQ.,

308 McCandless Bldg.,
Honolulu, T. H.

PETER A. LEE, ESQ.,

313 McCandless Bldg.,
Honolulu, T. H.

O. P. SOARES, ESQ.,

1-2 Union Trust Bldg.,
Honolulu, T. H.,

Attorneys for Plaintiff in Error.

CHARLES M. HITE, ESQ.,

Public Prosecutor, and

ALLEN R. HAWKINS, ESQ.,

Assistant Public Prosecutor,

City Hall,
Honolulu, T. H.,

Attorneys for the Territory,
Defendant in Error.

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

Cr. No. 19015

January Term, 1947

TERRITORY OF HAWAII,

vs.

CLARENCE C. CAMINOS,

Defendant.

INDICTMENT FOR
RECEIVING A BRIBE

First Count

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 18th day of August, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Nine Hundred

Dollars (\$900.00), in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in [4*] the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

Second Count

And the Grand Jury of the First Judicial Circuit of the Territory of Hawaii do further present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 25th day of August, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Five Hundred Dollars (\$500.00), in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

Third Count

And the Grand Jury of the First Judicial Cir-

cuit of the Territory of Hawaii do further present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 2nd day of September, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Two Thousand Dollars (\$2000.00), in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the

said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

Fourth Count

And the Grand Jury of the First Judicial Circuit of the Territory of Hawaii do further present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 9th day of September, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Five Hundred (\$500.00), in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons,

to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit [7] the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

Fifth Count

And the Grand Jury of the First Judicial Circuit of the Territory of Hawaii do further present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of his Honorable Court, on or about the 16th day of September, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Nine Hundred (\$900.00), in money, a more particular description of which is to the Grand

Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, [8] contrary to the form of the statute in such case made and provided.

A true bill found this 26th day of February, 1947.

/s/ ARTHUR C. HILLIGER,

Acting Foreman of the
Grand Jury.

/s/ EDWARD N. SYLVA,

Special Assistant Public Prosecutor of the City
and County of Honolulu.

[Endorsed]: Filed February 26, 1947. [9]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

Cr. No. 19018

January Term, 1947

TERRITORY OF HAWAII,

vs.

CLARENCE C. CAMINOS,

Defendant.

INDICTMENT FOR
RECEIVING A BRIBE

First Count

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 6th day of January, 1946, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Three Thousand Nine Hundred Dollars (\$3,900.00), in money, a more particular description of which is

to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity as a police [11] officer aforesaid, apprehend and arrest the said Paul Au, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

Second Count

And the Grand Jury of the First Judicial Circuit of the Territory of Hawaii do further present that Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 13th day of January, 1946, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos,

under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Two Thousand One Hundred Dollars (\$2,100.00), in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity as a police officer aforesaid, apprehend and arrest the said Paul Au, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying [12] on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided.

A true bill found this 26th day of February, A.D. 1947.

/s/ ARTHUR C. HILLIGER,
Acting Foreman of the
Grand Jury.

/s/ EDWARD N. SYLVA,
Special Assistant Public Prosecutor of the City and
County of Honolulu.

[Endorsed]: Filed February 26, 1947. [13]

[Title of Circuit Court and Cause.]

C - 19015

CLERK'S MINUTES

At Term: Saturday, March 1, 1947, at 10:00 a.m.

Present: Hon. W. C. Moore, Fourth Judge, Presiding.

Merle Uehling, Clerk.

Olaf Oswald, Reporter.

Edward Sylvia, Special Prosecutor.

Counsel: At request of O. P. Soares, Esq., his name entered as counsel for Defendant Caminos.

Continuance

Defendant handed a copy of the indictment. Case continued to March 3, 1947, for arraignment and plea.

By Order of the Court:

/s/ MERLE UEHLING,
Clerk.

At Term: Monday, March 3, 1947, at 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge, Presiding.

Merle Uehling, Clerk.

Lawrence Chaffee, Reporter.

Allen Hawkins, Esq., Asst. Public Prosecutor.

Counsel: Defendant in Person.

Continuance

Withdrawal as counsel by Mr. O. P. Soares.

At request of Defendant and the Prosecution, case continued for arraignment and plea to March 7, 1947, at 1:30 p.m.

By Order of the Court:

/s/ MERLE UEHLING,
Clerk.

At Term: Friday, March 7, 1947, at 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge, Presiding.

Merle Uehling, Clerk.

Lawrence Chaffee, Reporter.

Counsel: Allen Hawkins, Esq., Asst. Public Prosecutor.

At Request of Attorneys Botts & Patterson, Their Names Entered as Counsel for Defendant Caminos.

Defendant, through Attorneys Botts & Patterson, waived reading of the indictment and consented to its entry in the words and terms of the original indictment. At request of counsel, case continued to March 21, 1947, for plea.

By Order of the Court:

/s/ MERLE UEHLING,
Clerk. [14]

At Term: Tuesday, March 25th, 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge Presiding.

Hazel G. McCraw, Clerk.

Arthur Perkins, Bailiff.

Reporter: Ruby Lynn, bk. 1, pgs. 36-47.

Counsel: Kenneth Young, Esq., Special Public Prosecutor.

Botts & Patterson Counsel for Defendant.

Defendant in Person.

Plea and Setting

Defendant in person with his counsel, and upon being asked by the Court his plea enters a plea of Not Guilty.

Case placed on the ready calendar for trial.

By Order of Court:

/s/ HAZEL G. McCRAW,
Clerk. [15]

At Term: 1:30 p.m., Wednesday, April 16, 1947.

Present: Hon. A. M. Cristy, Second Judge Presiding.

M. K. Heine, Clerk.

Olaf Oswald, Reporter.

Counsel: Dudley Lewis, Esq., Asst. Attorney General.

Kenneth C. Young, Esq., Asst. Public Prosecutor.

Peter Lee, Esq., for Defendant.

Defendant in Person.

SETTING

Mr. Patterson informed the Court that he and Mr. Botts are withdrawing as counsel for the defendant, which the Court noted and entered into the records.

Mr. Lee entered his appearance as counsel for the defendant which was duly noted and entered into the records.

Upon agreement by counsel for the prosecution and counsel for the defense, the Court set this cause for trial by jury on Monday, May 5, 1947, at 9:00 a.m., drawing of a jury panel set for Thursday morning, May 1st, at 8:30 a.m. The Court further stated that counsel should notify the Court by 8:30 a.m., May 1st, if there is a change in the trial of this matter before a jury and that any other changes should be made known to counsel and Court by Friday, April 25, 1947, 1:30 p.m.

By Order of the Court:

/s/ M. K. HEINE,
Clerk.

At Term: 2:40 p.m., Friday, April 28, 1947.

Present: Hon. Albert M. Cristy, Second Judge,
Presiding.

B. W. Griep, Clerk.
O. Oswald, Reporter.

Counsel: Same.

Motion for Bill of Particulars—Denied;
Motion for a Continuance—Granted;
Motion for Consolidation—Granted.

Mr. Lee presented argument in support of his motion for a Bill of Particulars.

Mr. Lewis argued against the motion.

The Court after hearing argument by counsel, ruled that the indictments contained sufficient information as to the date, time and place of the alleged transactions, and therefore denied the motion for a Bill of Particulars.

Mr. Lee next presented his motion for a continuance to the Court.

The Court granted the motion for a continuance and reset the date of trial to Monday, May 12th, 1947, at 9:00 a.m. and set down Thursday, May 8th, 1947, at 8:30 a.m. as the date the jury panel is to be drawn for the trial.

Mr. Lee presented his third and last motion—Motion for Consolidation of the cases in Cr. 19015 and Cr. 19018.

There being no objection by Prosecution, the Court ordered the consolidation of the two cases, and that they be tried together.

By Order of the Court:

/s/ B. GRIEP,

Clerk. [16]

At Term: Monday, May 12, 1947, 8:45 a.m.

Present: Hon. A. M. Cristy, Second Judge Presiding. . .

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Dudley Lewis, Esq., Asst. Attorney General.

Kenneth C. Young, Esq., Asst. Public Prosecutor.

Peter Lee, Esq., for Defendant.

E. Beebe, Esq., for Defendant.

Fred Patterson, Esq., for Defendant.

Defendant in Person.

Trial by Jury

8:45 a.m. The Clerk called the roll of jurors showing 21 present.

9:00 a.m. Counsel announced their readiness to proceed with this cause.

9:02 a.m. Mr. Beebe entered his appearance as associate counsel for the defendant.

9:03 a.m. Mr. Patterson entered his appearance as associate counsel for the defendant.

9:04 a.m. The Clerk called the case, and after counsel indicated that they were ready to proceed with this cause, the Court directed the Clerk to draw 12 names from the jury box. The following names were drawn:

1. J. A. Hazelrigg (275)
2. Ted T. Hangai (267)

3. Kam Y. Goo (243)
4. Walter T. Y. Ing (303)
5. Alvin J. Baptist (38)
6. Lee Allen Tumlinson (566)
7. Ambrose Hutchison (298)
8. A. B. Clark (129)
9. Henry H. K. Chang (114)
10. Louis C. Medeiros (379)
11. Henry Zatz (648)
12. Frank R. Girod (235)

9:05 a.m. The clerk swore the jurors present in the Court room as to their qualifications whereupon counsel for the prosecution and counsel for the defense examined the jurors for cause and passed all of them except Mr. Zatz.

11:26 a.m. Mr. Beebe challenged Mr. Zatz for cause and asked that he be excused.

11:27 a.m. The Court denied the request and asked counsel to reframe his questions to the juror. The Court allowed Mr. Beebe an exception.

11:45 a.m. Exercising his first peremptory challenge, Mr. Lewis excused Alvin J. Baptist, (38) who was excused by the Court until called, and in his place and stead was drawn

W. S. Willis (614) who was examined for cause by counsel on both sides and passed.

Exercising his first peremptory challenge, Mr. Lee excused Henry Zatz (648) and in his place and stead was drawn

Marcus R. Colburn, Jr. (137) who was examined for cause by counsel on both sides and passed.

Exercising his second peremptory challenge, Mr. Lewis excused Marcus R. Colburn, Jr., who was excused by the Court until called, and in his place and stead was drawn

Richard W. T. Lee (352) who was examined for cause by counsel on both sides and passed.

Exercising his second peremptory challenge, Mr. Lee excused Frank R. Girod (235) and in his place and stead was drawn

Joseph A. Byrom (94).

12:05 p.m. Mr. Beebe moved that the jury be excused on the grounds recorded by the court reporter.

12:06 p.m. The Court denied the motion and stated that counsel would be entitled to three challenges each; and that further it was counsel for the defense who had requested that Cr. Nos. 19015 and 19018 be consolidated for trial thereby allowing only three challenges each for counsel.

12:07 p.m. Court called recess until 1:30 p.m. this afternoon.

1:30 p.m. Joseph A. Byrom was examined for cause by counsel on both sides and passed.

Exercising his third peremptory challenge, Mr. Young excused Louis C. Medeiros (379) and in his place and stead was drawn [17]

A. J. Duarte (184) who was examined for cause by counsel on both sides and passed.

Exercising his third peremptory challenge, Mr. Patterson excused W. S. Willis (614) and in his place and stead was drawn

William C. Bruhn (80) who was examined for cause by counsel on both sides and passed.

2:00 p.m. Mr. Patterson renewed defense counsel's objections to the Court's ruling that counsel would have three challenges apiece in this cause. The Court informed counsel that his former ruling would still stand and that counsel would be allowed an exception.

2:05 p.m. The clerk swore in the following jurors to try the case:

1. J. A. Hazelrigg (275)
2. Ted T. Hangai (267)
3. Kam Y. Goo (243)
4. Walter T. Y. Ing (303)
5. William C. Bruhn (80)
6. Lee Allen Tomlinson (566)
7. Ambrose Hutchison (398)
8. A. B. Clark (129)
9. Henry H. K. Chang (114)
10. A. J. Duarte (184)
11. Richard W. T. Lee (352)
12. Joseph A. Byrom (94)

The Court excused the remaining jurors in the court room until called.

2:07 p.m. Court adjourned until 9:00 a.m. tomorrow morning.

By Order of the Court:

/s/ M. K. HEINE,

Clerk.

At Term: Tuesday, May 13, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Robert B. Griffith (SWBC), Esq., for Defendant.

Further Trial

9:00 a.m. Court and counsel indicated their readiness to proceed in the trial of this cause in the presence of the jury.

9:02 a.m. Mr. Lewis presented his opening statement to the jury.

9:19 a.m. The defense reserved its opening statement to the jury.

9:20 a.m. Axel E. Nelson (1), was called as a witness by Mr. Lewis, duly sworn and testified on direct examination.

Prosecution's Exhibit "A" (In Evidence):

Oath of Office, Police Department, City and County of Honolulu, Territory of Hawaii, signed by Clarence C. Caminos, dated Feb. 1, 1933; received and marked.

Prosecution's Exhibit "A-1" (For Identification):

Personnel folder of Clarence C. Caminos with the Honolulu Police Department; received and marked.

9:28 a.m. Cross-examination by Mr. Patterson.

9:33 a.m. Redirect examination by Mr. Lewis.
9:35 a.m. Recross-examination by Mr. Patterson.
9:37 a.m. Carl B. Siebert (2), was called by Mr. Young as a witness; duly sworn and testified on direct examination.

Prosecution's Exhibit "B-1 to B-4" (In Evidence):

Photographs (4), taken by Carl B. Siebert, Honolulu Police Department, of Paul Au's gambling rooms in the Honolulu Rooms; received and marked.

9:45 a.m. Cross-examination by Mr. Lee.
9:47 a.m. Alfred Richardson (3), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

9:55 a.m. Redirect examination by Mr. Lee.
10:02 a.m. Redirect examination by Mr. Lewis.
10:05 a.m. Recross-examination by Mr. Lee.
10:07 a.m. Court called recess.
10:14 a.m. Court reconvened.
10:14 a.m. Joseph M. Scharsh (4), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

10:22 a.m. Cross-examination by Mr. Patterson.
10:30 a.m. The Court ordered that all witnesses to be called by the prosecution or defense counsel leave the courtroom immediately; counsel thereupon removed from the courtroom all witnesses to be called.

10:55 a.m. Redirect examination by Mr. Lewis.
10:57 a.m. Recross-examination by Mr. Patterson.

Defendant's Exhibit "1, 2, 3, 4, 5, and 6" (In Evidence):

Six photographs taken by Carl B. Siebert, Hon. Police Department, of Paul Au's gambling rooms and dogs kept at the Honolulu Rooms; received and marked.

11:02 a.m. Court called recess.

11:10 a.m. Court and counsel met in chambers on an offer of proof by Mr. Patterson which was denied by the Court. Exception was allowed Mr. Patterson.

11:17 a.m. Court reconvened in the courtroom. Further re-cross-examination by Mr. Patterson.

11:19 a.m. Re redirect examination by Mr. Lewis.

Prosecution's Exhibits "B-5 and B-6" (In Evidence):

Two photographs taken by Carl B. Siebert, Hon. Police Department, of dogs at Paul Au's gambling rooms, Honolulu Rooms; received and marked.

11:22 a.m. Re recross-examination by Mr. Patterson.

11:26 a.m. Kam Yin Ching (5), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

11:35 a.m. Cross-examination by Mr. Lee.

11:52 a.m. Redirect examination by Mr. Lewis.

Prosecution's Exhibits "B-7":

Photograph taken by Carl Siebert at the Honolulu Rooms showing Annabelle Damon, newspaper reporter, Chief Wm. Gabrielson, and Robert Kennedy, Hon. Police Dept.; received and marked.

11:55 a.m. Court adjourned until 9:00 a.m., tomorrow morning for further trial. . .

By Order of the Court:

/s/ M. K. HEINE,

Clerk.

At Term: Wednesday, May 14, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

9:00 a.m. Counsel indicated their readiness to proceed with the trial and the Court noted the presence of the jury.

9:02 a.m. Paul Au (6), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

9:40 a.m. Mr. Patterson moved that the Court, jury and counsel visit the Honolulu Rooms, scene of gambling, and continue the witness' testimony there.

9:42 a.m. Mr. Lewis argued on the motion.
9:43 a.m. The Court denied the motion. [19]
9:44 a.m. Further direct examination by Mr. Lewis.

9:50 a.m. Mr. Patterson moved to strike certain testimony of Mr. Au.

9:51 a.m. The Court denied the motion.
9:52 a.m. The Court instructed the jury not to regard the arguments between Court and counsel and between counsel and further not to hold this against the defendant.

10:00 a.m. Court called recess.
10:07 a.m. Court reconvened. Further direct examination by Mr. Lewis.

10:15 a.m. Mr. Lee moved to strike all the testimony presented by Mr. Au in reference to payments on various dates to Mr. Wm. Clark and stated his grounds for same.

10:17 a.m. The Court denied the motion and allowed counsel an exception.

10:18 a.m. Cross-examination by Mr. Patterson.
10:56 a.m. Court called recess.
11:01 a.m. Court reconvened. Further cross-examination by Mr. Patterson.

11:53 a.m. Redirect examination by Mr. Lewis.
11:59 a.m. Court recessed until 2:00 p.m.

By Order of the Court:

/s/ M. K. HEINE,

Clerk.

2:00 p.m. Court reconvened.

The stated for the record, the presence of the jury and counsel.

Paul Au resumed the stand on further re-direct examination by Mr. Lewis.

2:08 p.m. Magdaline Yu (7), was called as a witness by prosecution, duly sworn and testified on direct examination by Mr. K. Young.

2:15 p.m. Cross-examination by Mr. Lee.

2:26 p.m. William Clark (8), was called as a witness for Prosecution, duly sworn and testified on direct examination by Mr. Lewis.

2:59 p.m. Court called a recess.

3:05 p.m. Court reconvened.

William Clark resumed the stand on further direct examination by Mr. Lewis.

3:10 p.m. Cross-examination by Mr. Lee.

4:00 p.m. Court stated that the further trial of this case would be resumed tomorrow morning at 9 o'clock—5/15/47—and adjourned.

By Order of the Court:

/s/ B. GRIEP,

Clerk.

At Term: Thursday, May 15, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

9:00 a.m. William Clark resumed the stand on further cross-examination by Mr. Lee.

9:08 a.m. Re-direct examination by Mr. Lewis.

9:10 a.m. Mr. Patterson moved to strike the answer of the witness for the reason recorded by the Court reporter.

9:13 a.m. The Court denied the motion and allowed counsel an exception.

9:23 a.m. Recross-examination by Mr. Patterson.

9:25 a.m. Further recross-examination by Mr. Lee.

9:28 a.m. Re redirect examination by Mr. Lewis.

9:30 a.m. Thomas G. Rodenhurst (9), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

9:37 a.m. Cross-examination by Mr. Patterson.

9:50 a.m. Redirect examination by Mr. Lewis.

9:55 a.m. Recross-examination by Mr. Patterson.

9:57 a.m. Court called recess.

10:05 a.m. Court reconvened. Further recross-examination by Mr. Patterson.

10:10 a.m. Mr. Patterson made an offer of proof to the Court which was denied and exception allowed counsel.

10:12 a.m. Re redirect examination by Mr. Lewis.

10:15 a.m. Lawrence Loo (10), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

10:25 a.m. Cross-examination by Mr. Patterson.

11:02 a.m. Court called recess.

11:09 a.m. Court reconvened. Richard C. Miller (11), was called by Mr. Lewis as a witness, duly sworn and testified on direct examination.

11:16 a.m. Cross-examination by Mr. Patterson.

11:23 a.m. Court called recess.

11:30 a.m. Court and counsel met in chambers and Mr. Lee requested the Court's indulgence in having the prosecution produce the witness, Paul Au, for identification purposes tomorrow morning at 9:00 a.m.

11:31 a.m. The Court granted the request and ordered the prosecution to bring into Court Paul Au at 9:00 a.m. tomorrow morning.

11:40 a.m. Court reconvened in open court. The prosecution rested.

11:42 a.m. Court adjourned until 9:00 a.m. tomorrow morning.

By Order of the Court:

/s/ M. K. HEINE,

Clerk.

At Term: Friday, May 16, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

9:00 a.m. Court indicated the presence of counsel and jury.

9:02 a.m. Mr. Young stated that the Court take judicial notice of the calendar year 1945 and 1946 which the Court noted.

9:03 a.m. Mr. Patterson moved that the Court grant the defense a directed verdict on the grounds recorded by the Court reporter.

9:10 a.m. Mr. Lee presented to the Court a memorandum citing authorities supporting a directed verdict for the defense.

9:15 a.m. The Court denied the motion on the grounds recorded by the Court reporter.

9:17 a.m. Ruth Caminos Walea (12), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

9:25 a.m. Cross-examination by Mr. Lewis.

9:27 a.m. Leilani Fuller (13), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

9:35 a.m. Cross-examination by Mr. Lewis.

9:37 a.m. Redirect examination by Mr. Lee.

9:39 a.m. Capt. Dewey Mookini was called three times by the Court Bailiff, Joseph Munson, for the defense but without response.

9:40 a.m. See Gun Wong (14), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

9:47 a.m. The Court denied the offer of proof of Mr. Lee.

9:50 a.m. The Court granted counsel for the defense the right to continue direct examination of the witness, See Gun Wong, on Monday morning when Mr. Ching is produced in Court at 9:00 a.m.

9:52 a.m. Mr. Lewis reserved the right to cross-examine this witness after the defense has completed their direct examination of this witness on Monday morning. The Court granted the reservation.

9:55 a.m. Capt. Dewey Mookini (15), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

10:05 a.m. Court called recess.

10:12 a.m. Court reconvened. Further direct examination by Mr. Lee.

10:15 a.m. Cross-examination by Mr. Lewis.

10:17 a.m. Redirect examination by Mr. Lee.

10:18 a.m. Re redirect examination by Mr. Patterson.

10:22 a.m. Re recross-examination by Mr. Lawis.

10:24 a.m. George Hasegawa (16), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

10:26 a.m. Mr. Hasegawa was excused from the courtroom temporarily by Mr. Lee and Mrs. Ruth Walea was called to the stand for the purpose of identifying Paul Au who was also present in the courtroom.

10:28 a.m. Mrs. Leilani Fuller was called to the stand for the purpose of identifying Paul Au who was present in the courtroom.

10:30 a.m. George Hasegawa was called back to

the stand on further direct examination by Mr. Lee.

10:32 a.m. No cross-examination.

10:33 a.m. Robert Kinsley (17), was called by Mr. Patterson as a witness, duly sworn and testified on direct examination.

11:00 a.m. Court called recess.

11:05 a.m. Court and counsel met in chambers and Mr. Patterson presented his offer of proof on the grounds recorded by the Court reporter.

11:12 a.m. Mr. Lewis argued.

11:15 a.m. The Court outlined three points on which Mr. Patterson's offer of proof was presented and granted the first which is recorded by the Court reporter. The Court denied the second and third points and allowed counsel for the defense an exception.

11:30 a.m. Court and counsel reconvened in open court.

11:31 a.m. Further direct examination by Mr. Patterson.

11:33 a.m. Cross-examination by Mr. Lewis.

11:34 a.m. Louis Paresa (18), was called by Mr. Patterson as a witness, duly sworn and testified on direct examination.

12:05 a.m. Court adjourned until Monday, May 19, 1947, at 9:00 a.m. for further trial in this cause.

By Order of The Court:

/s/ M. K. HEINE,
Clerk.

At Term: Monday, May 19, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge
Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

9:00 a.m. The Court indicated the presence of counsel and jury.

9:02 a.m. Mr. Patterson petitioned the Court's approval on a visitation to the Honolulu Rooms by Court, counsel and the jury.

9:03 a.m. Mr. Lewis argued on the matter.

9:06 a.m. Mr. Patterson argued further.

9:07 a.m. The Court stated it would not rule on this matter at present, but would go into the issues of it during recess.

9:07 a.m. Louis Paresa was recalled to the stand by Mr. Patterson on further direct examination.

9:21 a.m. Cross-examination by Mr. Lewis.

9:23 a.m. Kam Yin Ching was recalled to the stand by Mr. Lee on further cross-examination.

9:25 a.m. See Gun Wong was called into the courtroom for identification by the witness.

9:40 a.m. See Gun Wong was recalled by Mr. Lee on further direct examination.

9:45 a.m. Cross-examination by Mr. Lewis.

9:50 a.m. Re direct examination by Mr. Lee.

9:51 a.m. Harry Hosoi (19), was called by Mr. Lee as a witness, duly sworn and testified on direct examination.

9:53 a.m. The Court informed counsel and the jury that he had been requested by Mr. O. P. Soares, counsel for this witness in another case, and who was unable to be present in Court this morning, to inform the witness of his constitutional rights. Thereupon the Court [22] proceeded to inform the witness of his constitutional rights.

9:54 a.m. Mr. Patterson petitioned that the witness be granted immunity if he so testified for the defense as other witnesses of the prosecution had been promised.

9:55 a.m. The Court denied the request and excused the witness.

10:05 a.m. Court called recess.

10:10 a.m. Court and counsel met in chambers and Mr. Patterson renewed his request that the Court, counsel and jury visit the Honolulu Rooms, and further stated that the defense would pay all expenses connected with this excursion.

10:18 a.m. Mr. Young argued on the petition.

10:20 a.m. The Court granted the request and stated that visitation to the Honolulu Rooms would be set for this afternoon at 1:30 p.m. by bus, if one is available.

10:30 a.m. Court reconvened in open court.

10:31 a.m. Judge Harry Steiner (20), was called by Mr. Patterson as a witness and testified on direct examination after both counsel waived the oath.

10:33 a.m. Mr. Patterson was denied by the Court the introduction of an exhibit in evidence for the defense.

10:35 a.m. Mr. Young moved to strike the testi-

mony of the witness, Harry Steiner, pertaining to a case which came up before him in the District Court of Honolulu.

10:36 a.m. The Court granted the motion to strike.

10:40 a.m. No cross-examination.

10:42 a.m. Theodore H. Murray (21), was called by Mr. Patterson as a witness, duly sworn and testified on direct examination.

Defendant's Exhibit "7" (In Evidence):

Leather dog collar about 2" wide with metal buckle and ring attached; received and marked.

11:07 a.m. Cross-examination by Mr. Lewis.

11:44 a.m. Court called a recess until 1:30 p.m. this afternoon.

By Order of The Court:

/s/ M. K. HEINE,

Clerk.

1:30 p.m. Court reconvened.

The Court stated that the Court, jury, Counsel, Bailiff, reporter, Clerk and defendant would proceed to the Honolulu Rooms at Beretania and Aala Streets via H.R.T. Bus which is now waiting in front of the judiciary building, to inspect the premises.

1:32 p.m. Court adjourned to proceed to the Honolulu Rooms for the above mentioned inspection.

1:45 p.m. Court and jury arrived at 347-351 N. Beretania St., a dry goods store, and began inspec-

tion of the premises. Court and Jury then proceeded to 347-A & B, the same being the Honolulu Rooms and started an inspection of the entire premises—a 2 story frame building—A detail description of all rooms, doorways, fixtures and furnishings, and exits was read into the record by the Court and the same recorded by Court Reporter O. Oswald.

2:42 p.m. Court, jury and counsel arrived back at the Court House.

Immediately upon arrival at the Courthouse, the Court called a five minute recess.

2:50 p.m. Court, jury and Counsel reconvened in the Courtroom to resume further trial of this case.

Father Ernest Claes (22), Roman Catholic priest from Kahuku Parish, was called as a defense and character witness, duly sworn and testified on direct examination by Mr. Lee.

2:54 p.m. George Kinney (23), was called by defense as a character witness, duly sworn and testified on direct examination by Mr. Lee.

2:59 p.m. Edward J. Burns (24), was called by the defense as a character witness, duly sworn and testified on direct examination by Mr. Patterson.

3:02 p.m. Sanford Parker (25), was called by the defense as a character witness, duly sworn and testified on direct examination by Mr. Lee.

3:06 p.m. Court called a recess until 9:00 a.m. tomorrow morning, at which time further trial of this case would be resumed.

By Order of The Court:

/s/ B. GRIEP,
Clerk. [23]

At Term: Tuesday, May 20, 1947, 9:00 a.m.

Present: Hon. A. M. Cristy, Second Judge
Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

9:05 a.m. The Court indicated the presence of counsel, defendant and jury.

9:06 a.m. Ernest Moses (26), was called as a witness by Mr. Patterson, duly sworn and testified on direct examination.

9:25 a.m. Mr. Lewis moved to strike certain testimony of Ernest Moses.

9:26 a.m. The Court granted the motion.

9:29 a.m. Cross-examination by Mr. Lewis.

9:44 a.m. Upon Mr. Patterson's request, the Court instructed the jury to disregard comments between attorneys and between Court and counsel.

9:45 a.m. Re direct examination by Mr. Patterson.

9:56 a.m. Re cross-examination by Mr. Lewis.

9:58 a.m. Re re direct examination by Mr. Patterson.

10:00 a.m. Court called recess.

10:09 a.m. Court reconvened. William Alsup Cleghorn (27), was called as a character witness by Mr. Patterson, duly sworn and testified on direct examination.

10:13 a.m. No cross-examination by the prosecution.

10:14 a.m. Capt. Van Kurin was called three times by the Court Officer, Joseph K. Munson, for the defense without response.

10:15 a.m. Robert K. Nishida (28), was called as a witness by Mr. Patterson, duly sworn and testified on direct examination.

10:33 a.m. Cross-examination by Mr. Lewis.

10:45 a.m. Re direct examination by Mr. Patterson.

10:46 a.m. Theodore F. Nobriga (29), was called as a witness by Mr. Lee, duly sworn and testified on direct examination.

10:54 a.m. No cross-examination by prosecution.

10:55 a.m. William Hoopai, Chief of Police (30), was called by Mr. Patterson as a witness, duly sworn and testified on direct examination.

11:05 a.m. Court called recess.

11:12 a.m. Court reconvened. Further direct examination by Mr. Patterson.

11:15 a.m. Cross-examination by Mr. Lewis.

11:23 a.m. Re direct examination by Mr. Patterson.

11:25 a.m. Mr. Lewis moved to strike certain testimony of William Hoopai which was granted by the Court and exception allowed Mr. Patterson.

11:30 a.m. Court to witness.

11:32 a.m. Further re direct examination by Mr. Patterson.

11:33 a.m. Carl Seibert (31) was called by Mr. Patterson as a witness, previously sworn, and testified on direct examination.

11:40 a.m. Cross-examination by Mr. Lewis.

11:47 a.m. Re direct examination by Mr. Patterson.

11:50 a.m. Re cross-examination by Mr. Lewis.

11:52 a.m. Re re direct examination by Mr. Patterson.

11:53 a.m. Capt. Walter Larsen (32), was called by Mr. Patterson as a witness, duly sworn, but did not testify.

11:54 a.m. Mr. Griffith informed the Court he has been retained by this witness in another case and objected to his testifying at this time. Mr. Griffith further requested that the Court inform him of his constitutional rights.

11:55 a.m. The Court informed Walter Larsen of his constitutional rights and excused him after he indicated he did not wish to testify.

11:56 a.m. Sidney R. Gatton (33), was called as a character witness by Mr. Lee, duly sworn and testified on direct examination.

11:57 a.m. Cross-examination by Mr. Lewis.

11:59 a.m. Lawrence Kunahisa (34), was called as a character witness by Mr. Lee, duly sworn and testified on direct examination.

12:00 m. No cross-examination by the prosecution.

12:02 p.m. Court adjourned until 9:00 a.m. tomorrow morning.

By Order of The Court:

/s/ M. K. HEINE,

Clerk. [24]

At Term: 9:00 a.m., Wednesday, May 21, 1947.

Present: Hon. Albert M. Cristy, Second
Judge, Presiding.
B. W. Griep, Clerk.
O. Oswald, Reporter.

Counsel: J. Esposito, Esq.;
D. Lewis, Esq., &
Ken. Young, Esq.,
For Prosecution.

Fred Patterson, Esq.;
Peter Lee, Esq., &
R. Griffith, Esq., (SWBC),
For Defendant.

Defendant In Person.

Further Jury Trial

The Court stated for the record that the Jury and counsel are present.

Mr. Lee stated that Mr. Griffith associate counsel for defendant was not able to attend the trial this morning.

9:03 a.m. Donald Marshall (35), was called by Mr. Patterson as a character witness, duly sworn and testified on direct examination.

9:10 a.m. Cross-examination by Mr. Lewis.

9:31 a.m. Re direct examination by Mr. Patterson.

9:33 a.m. Clarence C. Caminos (36), was called to the stand by Mr. Patterson, duly sworn and testified on direct examination.

9:54 a.m. Court called a recess.

10:21 a.m. Court reconvened.

Clarence C. Caminos resumed the stand on further direct examination.

11:01 a.m. Court called a recess.

11:08 a.m. Court reconvened.

It was stipulated by and between counsel that the evidence may show that from the time of Wm. Clark's suspension from the Hon. Police Dept. to the time the (his) deposit box was opened, it was guarded by Territorial and Federal officials; that at the time the box was opened for inspection of its contents, there was found in the same, cash in the sum of \$136,000.00 to \$140,000.00 and bonds, and that during such opening of the box the same was guarded by Territorial and Federal Tax officials and that Mr. Clarke was not able to touch the safety deposit box during all the above mentioned time.

Clarence C. Caminos resumed the stand on further direct examination by Mr. Patterson.

12:01 p.m. Court called a recess until 2:00 p.m. this afternoon.

By Order of The Court:

/s/ B. GRIEP,

Clerk.

2:00 p.m. The Court indicated the presence of counsel, defendant and jury.

2:02 p.m. Further direct examination by Mr. Patterson of the witness Clarence C. Caminos.

2:05 p.m. Cross-examination by Mr. Lewis.

3:05 p.m. Court called recess.

3:12 p.m. Court reconvened. Further cross-examination by Mr. Lewis.

3:58 p.m. Mr. Lewis moved to strike certain testimony of the witness which was granted by the Court.

4:00 p.m. Court adjourned until 9:00 a.m., tomorrow morning.

By Order of The Court:

/s/ M. K. HEINE,

Clerk. [25]

At Term: 9:00 a.m., Thursday, May 22, 1947.

Present: Hon. Albert M. Cristy, Second Judge Presiding.

B. W. Griep, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Jury Trial

9:00 a.m. The Court stated for the record that the jury and counsel were present.

Clarence C. Caminos resumed the stand on further cross-examination by Mr. Lewis.

Prosecution's Exhibit C-1 to C-5 Included:

Hon. Police Dept. vouchers as follows: 1/18/46 received \$52.00 from Capt. Caminos by H. L. Lastimoza; 3/15/46 paid \$22.50 to H. L. Lastimoza by Capt. Caminos; 12/21/45 payment of

\$21.50 to H. L. Lastimoza by Capt. Caminos; 10/6/45 paid to H. L. Lastimoza sum of \$32.00 by Capt. Caminos; 9/26/45 paid sum of \$15.00 to H. L. Lastimoza by Capt. Caminos; received in evidence and marked, over objection of Counsel for defendant.

9:43 a.m. Court recessed.

9:52 a.m. Court reconvened.

Clarence C. Caminos resumed the stand on further cross-examination by Mr. Lewis.

Prosecution's Exhibit "D":

Folio of 84 vouchers made out by the Honolulu Police Dept. on account of Evidence and Expense and Incidentals; received in evidence over objection of defense counsel, and marked.

10:50 a.m. Court called a recess.

11:00 a.m. Court reconvened.

Clarence C. Caminos resumed the stand on further cross-examination by Mr. Lewis.

11:16 a.m. Re direct examination by Mr. Patterson.

Defendant's Exhibit "8" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 10/6/45, showing payment of \$50.00 to Alex Brown by Capt. Caminos; received in evidence and marked.

Defendant's Exhibit "9" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 10/8/45 showing payment of \$80.00; received in evidence and marked.

Defendant's Exhibit "10" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 12/21/45, showing payment of \$21.50; received in evidence and marked.

Defendant's Exhibit "11" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 10/6/45, showing payment of \$32.00; received in evidence and marked.

Defendant's Exhibit "12" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 1/18/46, received in evidence and marked.

Defendant's Exhibit "13" (In Evidence):

Copy of Hon. Police Dept. voucher, dated 3/15/46, showing payment of \$22.50; received in evidence and marked.

12:06 p.m. Court continued the further trial of this case until 9:00 a.m. tomorrow morning and adjourned.

By Order of The Court:

/s/ B. GRIEP,

Clerk. [26]

At Term: 9:00 a.m., Friday, May 23, 1947.

Present: Hon. Albert M. Cristy, Second Judge
Presiding.

B. W. Griep, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Jury Trial

9:00 a.m. Mr. Lewis stated for the record that the jury and counsel were present.

Clarence C. Caminos resumed the stand on further re-direct examination by Mr. Patterson.

9:04 a.m. Re-cross-examination.

9:17 a.m. Leon M. Straus (37), Captain, Detective Div., Hon. Police Dept., was called as a defense witness, duly sworn and testified on direct examination by Mr. Patterson.

9:23 a.m. Defense rested. The Court allowed Mr. Lee's request that the defense be allowed to reopen their case.

Clarence S. H. Au (38), was called as a defense witness, duly sworn and testified. Mr. Clarence Au stated that he refuses to give any testimony on the ground that he is at present under an indictment. Mr. Au further stated that testimony given by him at this time might incriminate him and that he stood by his constitutional rights in not giving any testimony at this time.

The Court permitted Mr. Au to leave the stand.

9:35 a.m. Mr. Lee announced that the defense now re-rests its case.

9:36 a.m. Richard Kazuo Mikami (39), was called as a witness for prosecution, duly sworn and testified on direct examination by Mr. Lewis.

10:22 a.m. Court called a recess.

10:32 a.m. Richard Kazuo Mikami resumed the stand on further direct examination by Mr. Lewis.

Prosecution's Exhibit "E" (For Identification):

Statement made by Richard Kazuo Mikami in the Public Prosecutor's Office on April 3, 1946, at 2:55 p.m. to J. Jardine and recorded in short-hand and transcribed by Kathleen Jarrett; received for identification and marked.

11:06 a.m. Cross-examination by Mr. Patterson.

11:08 a.m. Court called a recess.

11:17 a.m. Court reconvened.

Mr. Peter Lee, associate counsel for defendant, moved to strike the entire testimony of Richard Kazuo Mikami and stated the grounds for the same.

The Court denied the motion to strike the entire testimony of Richard Kazuo Mikami and allowed the exception noted by Mr. Lee.

11:18 a.m. Kathleen Rego also known as Kathleen Jarrett (40), was called to the stand by Prosecution, duly sworn and testified on direct examination by Mr. K. Young.

The Court stated that only those portions of the statement made by Richard K. Mikami, tentatively marked for identification as Prosecution's Exhibit "E," that the said Mr. Mikami does not recall having been asked him and answers he does not recall giving, would be admitted in evidence.

11:28 a.m. Court called a recess.

11:40 a.m. Court reconvened.

Prosecution stated that Richard Kazuo Mikami had pointed out all questions and answers on statement marked for identification as Prosecution's Exhibit "E" and that the same were checked off

with a red pencil as being prior inconsistent statements, that the same have been numbered from 1 to 16 included, that the same would be typed on a separate sheet and introduced in evidence.

There was no objection by Counsel for defendant.

11:44 a.m. Kathleen Rego, also known as Kathleen Jarrett, resumed the stand on cross-examination by Mr. Patterson.

11:45 a.m. Jose Tantog (41) was called as a witness for Prosecution, duly sworn and testified on direct examination by Mr. Lewis.

11:55 a.m. Court called a recess until 2:00 p.m. this afternoon.

By Order of The Court:

/s/ B. GRIEP,

Clerk. [27]

2:00 p.m. Jose Tantog was recalled to the stand by Mr. Lewis on further direct examination.

2:21 p.m. Cross-examination by Mr. Patterson.

2:32 p.m. Re direct examination by Mr. Lewis.

2:35 p.m. Re cross-examination by Mr. Patterson.

2:43 p.m. Catalino Proprios (42) was called by Mr. Young as a witness, duly sworn and testified on direct examination.

2:49 p.m. Cross-examination by Mr. Patterson.

3:00 p.m. Court called recess.

3:06 p.m. Court reconvened. Further cross-examination by Mr. Patterson.

3:07 p.m. Re direct examination by Mr. Young.
Prosecution's Exhibit "F" (In Evidence: (Over and above objection of Counsel for Defense) Excerpts of the statement of Richard Kazuo Mikami made in the Public Prosecutor's Office on April 3, 1946, at 2:55 o'clock p.m., to J. Jardine and recorded in shorthand and transcribed by Kathleen Jarrett; received and marked.

3:15 p.m. Mrs. Kathleen Rego was called to the stand by Mr. Lewis and queried by the Court.

3:21 p.m. Counsel for the prosecution rested.

3:22 p.m. Court adjourned until 8:30 a.m., Monday morning, May 26, 1947, but the Court instructed counsel to meet in chambers tomorrow morning at 9:30 a.m. for settlement of instructions.

By Order of The Court:

/s/ M. K. HEINE,

Clerk.

At Term: 9:30 a.m., Saturday, May 24, 1947.

Present: Hon. A. M. Cristy, Second Judge
Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Settlement of Instructions

Court and counsel met in chambers for the settlement of instructions of the prosecution and defense.

Prosecution's Instructions:

1. Given over objection.
2. Given as amended by agreement as to form.
3. Given as amended over objection.
4. Given as amended over objection.
5. Given as amended over objection.
6. Given over objection.
7. Given as amended over objection.
8. Given over objection.
9. Given over objection.
10. Given over objection.
11. Given by agreement as to form.
12. Given over objection.
13. Given over objection.
14. Given over objection.
- 14A. Given over objection.
15. Withdrawn.

Defendant's Instructions:

1. Refused.
2. Refused as covered.
3. Given over objection.
4. Given by agreement.
5. Given by agreement.
6. Refused as presented, but given as amended.
- 6A. Given over objection.
7. Given as amended over objection.
8. Given over objection.
9. Given by agreement.
10. Refused as drawn and given as amended.
- 10A. Given by agreement.

11. Given by agreement.
12. Given as amended by agreement.
13. Refused as drawn.
- 13A. Given as an amendment of No. 13 by agreement.
14. Refused by the Court.
15. Given as amended by agreement.
16. Given over objection.
17. Refused as drawn and given as amended in No. 17A.
- 17A. Given as amended over objection.
18. Withdrawn.
19. Withdrawn.
20. Given as amended over objection.
21. Refused as covered.
22. Given by agreement.
23. Refused.
24. Refused.
25. Given by agreement.
26. Refused.
27. Refused as argumentative.

Court and counsel adjourned until Monday, May 26, 1947, at 8:30 a.m., for further trial of this case.

By Order of The Court:

/s/ M. K. HEINE,
Clerk.

At Term: 8:30 a.m., Monday, May 26, 1947.

Present: Hon. A. M. Cristy, Second Judge
Presiding.

M. K. Heine, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Further Trial

8:35 a.m. Court indicated the presence of counsel, defendant and the jury.

8:37 a.m. Clarence C. Caminos was recalled by Mr. Patterson to the stand on further direct examination.

8:42 a.m. Further cross-examination by Mr. Lewis.

8:45 a.m. Re direct examination by Mr. Patterson.

8:47 a.m. Counsel stipulated that according to the records of the Honolulu Police Department, the defendant was transferred to District 3 on January 1, 1943, and appointed lieutenant in charge of the Ewa-Waianae District.

8:48 a.m. Harry F. Chun (43) was called as a witness by Mr. Patterson, duly sworn and testified on direct examination.

8:50 a.m. Cross-examination by Mr. Young.

8:53 a.m. Re direct examination by Mr. Patterson.

8:54 a.m. Counsel for the defense rested.

8:55 a.m. Court called a recess.

9:15 a.m. Court and counsel met in chambers.

Mr. Patterson presented his objections to Mr. Esposito arguing on the case for the prosecution as he had not been present during the earlier part of the trial. Mr. Patterson further stated that arguments for both defense and prosecution should be limited by the Court.

9:17 a.m. The Court ruled that Mr. Esposito would be allowed to argue only on that phase of the case in which he had been present and limited argument on both sides to two hours each.

9:20 a.m. Court reconvened in open court. Mr. Lewis presented his opening argument to the jury.

10:40 a.m. Court called recess.

(L. T. Chaffee substituted for O. Oswald, Reptr.)

10:45 a.m. Court reconvened. Mr. Lee presented his opening argument to the jury for the defense.

11:12 a.m. The Court recessed until 12:30 p.m. this afternoon when further trial of this case will be resumed. The jury was escorted to lunch by the Court Bailiff, Joseph K. Munson, and the Clerk of the Court, Benjamin Griep.

By Order of The Court:

/s/ M. K. HEINE,

Clerk. [29]

At Term: 12:25 p.m., Monday, May 26, 1947.

Present: Hon. Albert M. Cristy, Second Judge,
Presiding.

B. W. Griep, Clerk.

O. Oswald, Reporter.

Counsel: Same.

Settlement of Instructions

12:25 p.m. Court and Counsel convened in chambers to consider Defendant's Instruction No. 27.

The Court refused Defendant's Instruction No. 27 on the ground that it was argumentative.

Mr. Patterson noted an exception to the Court's refusal to allow the above instruction, together with the Court's remarks concerning said refusal.

The Court allowed the exception by Mr. Patterson. The Court further stated that the remarks concerning the refusal of Defendant's Instruction No. 27, made by the Court, were made outside of the presence of the jury.

12:30 p.m. Court recessed.

12:35 p.m. Court reconvened in open Court.

Mr. Patterson presented further argument for Defense.

2:16 p.m. Mr. Patterson concluded his argument for defense.

Court recessed.

2:23 p.m. Court reconvened. Mr. L. T. Chaffee replaced Mr. O. Oswald as court reporter.

Mr. Kenneth Young presented Prosecution's closing argument.

2:33 p.m. Mr. Joseph Esposito presented Prosecution's closing argument.

3:03 p.m. Mr. Esposito concluded Prosecution's closing argument.

The Court read the instructions to the jury.

3:37 p.m. Court concluded reading the instructions to the jury.

Mr. Patterson noted an exception to the Court's refusal to give Defendant's Instructions Nos. 1, 2, 13, 14, 21, 23, 24, 26 and 27; also those of Defendant's instructions which were amended before being given by the Court. Mr. Patterson also noted an exception to the Court's giving of Prosecution's Instructions Nos. 1 to 15 included.

3:40 p.m. The jury retired to deliberate on their verdict.

5:46 p.m. The jury came out of deliberation to seek more information from the Court on Defendant's Instruction No. 22.

Court, counsel and jury convened in open court with O. Oswald as Court reporter.

The Court after elaborating on points raised by the jury in Defendant's Instructions No. 22, ordered the jury to go to supper and upon their return from supper, to retire to the jury room and further deliberate on their verdict.

5:50 p.m. Court adjourned.

7:10 p.m. The jury having returned from supper, retired to the jury room to deliberate on their verdict.

8:13 p.m. The jury, together with Court and Counsel convened in open Court at this time for the

reason that said jury requested that the testimony of Robert Kingsley and William Clark be read to them.

At the direction of the Court, Court Reporter O. Oswald, read from his shorthand notes the testimony given by Messrs. Kingsley and Clark.

8:33 p.m. Court adjourned and the jury resumed deliberation.

8:42 p.m. The jury announced that it had arrived at a verdict.

The Court, jury and counsel convened in open Court.

The Clerk read the following verdict:

We, the Jury in the above entitled cause find the defendant Clarence C. Caminos as to Cr. No. 19015:

Count I (on or about Aug. 18, 1945) Guilty.

Count II (on or about Aug. 25, 1945) Guilty.

Count III (on or about Sept. 2, 1945) Guilty.

Count IV (on or about Sept. 9, 1945) Guilty.

Count V (on or about Sept. 16, 1945) Guilty.

As to Cr. No. 19018:

Count I (on or about Jan. 6, 1946) Guilty.

Count II (on or about Jan. 13, 1946) Guilty.

/s/ A. R. CLARK,

Foreman.

Dated: Honolulu, T. H., May 26, 1947.

The Court ordered the verdict received and filed.

Mr. Patterson, counsel for defense called for a poll of the jurors.

The Court asked the jurors if any of them dis-

agreed with the verdict as read.

The jury indicated that they were all in favor of the verdict arrived at.

Mr. Patterson noted an exception to the verdict, gave notice of a motion for a new trial and of his intention to sue out a writ of error.

The Court continued the matter of sentence to June 6, 1947, Friday, at 2:00 p.m.

8:47 p.m. Court adjourned.

By Order of The Court:

/s/ B. GRIEP,

Clerk.

At Term: 2:00 p.m., Friday, June 6, 1947.

Present: Hon. Albert M. Cristy, Second Judge,
Presiding.

B. W. Griep, Clerk,
O. Oswald, Reporter.

Counsel: Dudley Lewis, Esq., & K. Young, Esq.,
Special Asst. Prosecutors.

Peter Lee, Esq., For Defendant.
Defendant in Person.

Motion for a New Trial—Denied—Sentence

Mr. Lee asked that the Court rule on the motion for a new trial at this time.

Mr. Lewis stated that he would submit the matter without argument.

The Court denied the motion for a new trial and allowed the exception by Mr. Lee.

The Court stated that upon the verdict of guilty

returned by the jury in this case in Cr. No. 19015 on all five counts, the Court finds the defendant guilty and sentences the defendant as follows:

Count I—Sentenced to serve a maximum term of five (5) years in Oahu Prison.

Count II—Sentenced to pay a fine of \$1000.00.

Count III—Sentenced to pay a fine of \$1000.00.

Count IV—Sentenced to pay a fine of \$1000.00.

Count V—Sentenced to pay a fine of \$1000.00.

As to Cr. No. 19018 the Court stated that upon the verdict of guilty returned by the jury on both counts, the Court finds the defendant guilty of said counts and sentences the defendant as follows:

Count I—Sentenced to serve a maximum term of five (5) years in Oahu Prison.

Count II—Sentenced to pay a fine of \$1000.00.

The Court ordered the prison sentences to run consecutively.

The Defendant was also charged with costs in both cases. [31]

Mr. Lee gave notice of an appeal by way of writ of error.

The Court stated that notice of appeal having been given by defendant, the mittimus is stayed for a period of 30 days.

The Court reset defendant's bail at \$5000.00, the same to cover either or both cases. The Court ordered that the bail be produced within 48 hours.

By Order of The Court:

/s/ B. GRIEP,

Clerk. [32]

[Title of Circuit Court and Cause.]

C-19018

MINUTES OF THE CLERK

At Term: Saturday, March 1, 1947, at 10 a.m.

Present: Hon. W. C. Moore, Fourth Judge,
Presiding.

Merle Uehling, Clerk.

Olaf Oswald, Reporter.

Counsel: Edward Sylvia, Esq., Special Prosecutor.
O. P. Soares, Esq., Counsel for Defendant.

Continuance

Defendant handed copy of indictment. At request of counsel, case continued to March 3, 1947, at 1:30 p.m. for arraignment, plea and setting.

By Order of The Court:

/s/ MERLE UEHLING,

Clerk.

At Term: Monday, March 3, 1947, at 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge,
Presiding.

Merle Uehling, Clerk.

Lawrence Chaffee, Reporter.

Counsel: Allen Hawkins, Esq.,
Asst. Public Prosecutor.

O. P. Soares, Esq., Counsel for Defendant.

Withdrawal of Counsel and Continuance of Case

O. P. Soares, Esq., withdrew as counsel in this case. At request of Defendant and Prosecution, case continued for arraignment and plea to Friday, March 7, 1947, at 1:30 p.m.

By Order of The Court:

/s/ MERLE UEHLING,

Clerk.

At Term: Friday, March 7, 1947, at 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge,
Presiding.

Merle Uehling, Clerk.

Lawrence Chaffee, Reporter.

Counsel: Allen Hawkins, Esq.,
Asst. Public Prosecutor.

At Request of Attys. Botts & Patterson,
Their Names Entered as Counsel for
Defendant.

Arraignment

Defendant, through counsel, waived reading of the indictment and consented that it be entered in the words and terms of the original indictment. At request of counsel, case continued for plea to March 21, 1947, at 1:30 p.m.

By Order of The Court:

/s/ MERLE UEHLING,

Clerk. [33]

At Term: Tuesday, March 25th, 1947, 1:30 p.m.

Present: Hon. W. C. Moore, Fourth Judge,
Presiding.

Hazel G. McCraw, Clerk.

Arthur Perkins, Bailiff.

Reporter: Ruby Lynn.

Counsel: Kenneth Young, Esq.,
Special Public Prosecutor.
Botts & Patterson for Defendant.
Defendant in Person.

Plea & Setting

Defendant in person with his counsel and upon
being asked by the Court his plea enters a plea of
Not Guilty.

Case placed on the ready calendar for trial.

By Order of The Court:

/s/ HAZEL G. McCRAW,
Clerk. [34]

At Term: 2:40 p.m., Friday, April 28, 1947.

Present: Hon. Albert M. Cristy, Second Judge,
Presiding.

B. W. Griep, Clerk.

O. Oswald, Reporter.

Counsel: Dudley Lewis, Esq.,
Special Asst. Attorney General.
Kenneth C. Young, Esq.,
Special Asst. Public Prosecutor.
Peter Lee, Esq., For Defendant.
Defendant in Person.

Motion for Consolidation—Granted—Setting

Mr. Lee, attorney for defendant, having filed with the Court a Motion for Consolidation of cases in Cr. No. 19015 and Cr. No. 19018, and Prosecution having no objection to the same, the Court therefore ordered the consolidation of the two cases and that the same be tried together.

The Court set the said two cases for jury trial on Monday, May 12th, 1947, at 9:00 a.m.; jury panel to be drawn on Thursday, May 8th, 1947, at 8:30 a.m.

By Order of The Court:

/s/ B. GRIEP,

Clerk.

Note: For Minutes Covering Trial of the Above Entitled Case, Refer to Minutes in Criminal File No. 19015. [35]

REPORTER'S TRANSCRIPT

PAUL AU

Transcript of shorthand reporters' notes of the following:

1. The testimony of the Territory's witness, Paul Au, beginning with the line on page 88 (Volume I) of said transcript, which reads:

“Q. Mr. Au, at the time that Captain Caminos came on the——”

(Testimony of Paul Au.)

and ending with the line on page 98 of said transcript, which reads: "through Bill Clark."

Q. Mr. Au, at the time that Captain Caminos came on the—was on the Vice Squad you stated you first met him in June of 1945; what at that time was going on in the Honolulu Rooms?

A. Before that time we had gambling going on, then we waited to put on the gambling again; and then on or about the 9th day of June we put this gambling on again because I talked to Sergeant Bill Clark; he assured me—

Mr. Patterson (Interrupting): Now I object; I ask that that be stricken and the jury instructed to disregard it, that gambling went on again because he talked to Bill Clark.

The Court: That's perfectly admissible; he hasn't stated what Bill Clark told him. What Bill Clark conversed with you about is not evidence, Mr. Au, but the fact that you started after a conversation is still within the rule, Mr. Patterson.

Mr. Patterson: We take an exception.

The Court: Exception noted.

Mr. Patterson: I wish your Honor would again instruct this witness to talk loud; he can talk loud enough so that we can hear him over here; I don't say he's purposely doing it but he talks low most of the time and we can't quite hear it.

The Court: Mr. Au, see if you can't talk so that these lawyers can hear, at least so that all the jury can hear.

A. This conversation with Bill Clark, I men-

(Testimony of Paul Au.)

tioned the fact to him that Captain Caminos was friendly—— [36]

Mr. Patterson (Interrupting): Now I object to this; it's hearsay what he mentioned to Bill Clark.

The Court: That isn't hearsay; that's his own words he claims he said; what Bill Clark answered might be hearsay.

Mr. Patterson: Well, we object to any statement going in the record which was made by this man in the presence of Bill Clark when the defendant was not present, as hearsay and not binding upon this defendant, irrelevant, immaterial and incompetent, and self-serving.

The Court: Well, it might be self-serving, that part of it; it is not hearsay; the Court will sustain the objection on the ground of self-serving, as to any conversation with Bill Clark in the absence of Mr. Caminos.

Mr. Patterson: We request that the jury be instructed to disregard the statement.

Mr. Lewis: If the Court please, I'd like to be heard on that. This witness is not a defendant, as far as it being self-serving; I believe he can testify as to conversations.

The Court: Well, I don't know, Mr. Lewis; he's offered as an accomplice to an offense against the laws of the Territory. At the present time the Court will abide by the ruling; if you desire some recess to irrigate it further in the ears of the Court I'll listen to you.

Mr. Lewis: All right.

Q. Mr. Au, you did have a conversation with Bill Clark around the middle of June 1945?

A. Before the 9th day of June 1945.

Q. And as a result of that conversation did you do anything?

Mr. Patterson: Now I object to that upon the ground that it's not binding upon this defendant, it's self-serving, hearsay, irrelevant, immaterial and incompetent. If Bill Clark said something to him and then he said something, it's [37] not brought home to the defendant Caminos.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Exception allowed. Did you understand the question, Mr. Au?

A. After this conversation, next day or so I opened this gambling again in the Honolulu Rooms.

Mr. Lewis: Approximately what time was that?

A. I opened 'round about the 9th day of June, in the morning; I don't remember the hour.

Q. I was referring to the date, Mr. Au; about the 9th of June?

A. On or about the 9th day of June 1945.

Q. Did you have any other connection with Bill Clark after you opened up the gambling?

Mr. Patterson: May our same objection run to this questioning, if Your Honor pleases?

The Court: The Court will require you to make your objection to the question.

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial and incompetent, calling for hearsay testimony, it's self-serving, it's not binding upon this defendant in anyway whatsoever.

(Testimony of Paul Au.)

The Court: The general objection is rejected and you are allowed your exception.

A. On the 19th day of June—

Mr. Patterson (Interrupting): And may we further object upon the ground that this is a time not mentioned within the allegations of the indictment, also.

The Court: Objection overruled.

A. On the 19th day of June I gave Bill Clark \$900.00 for him and his boys, and one sealed envelope with \$500.00—— [38]

Mr. Patterson (Interrupting): I ask that that answer can be stricken as to the payment of money to Bill Clark for any purpose as not binding upon this defendant in anyway whatsoever, the transaction between him and Bill Clark; it has to be shown that this defendant is party to it.

The Court: I don't know, Mr. Patterson, how we can try it all with one question and answer; and the jury are instructed that this kind of evidence is merely background evidence and is not binding at this time upon alleged payments made upon Mr. Caminos, but you may have a right when the case is over to consider it in connection with the credibility and the procedure and the whole transaction that he testified to. The objection is overruled.

Mr. Patterson: Save an exception.

The Court: Exception noted.

Mr. Lewis: Could we have the question read back, please?

(Testimony of Paul Au.)

The Court: Have you got the question and answer, Mr. Reporter?

(Reporter reads last answer.)

A. The sealed envelope I instructed Bill Clark to give to Captain Caminos.

Mr. Patterson: I ask that that be stricken, upon the ground it's not binding upon this defendant, it's irrelevant, self-serving, and incompetent and immaterial. Certainly, Your Honor, they must show by evidence ahead of time before they allow this man to go on and relate a conversation which he had with another man or the act that this man committed; it's another act, when this individual here was not present, and it has not been brought home to him in any way; certainly it's not evidence against this man and it's prejudicial.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: Well, in connection with this sealed envelope you gave certain instructions to Bill Clark, is that correct? [39] A. Yes.

Q. Now Mr. Au, turning to the month of August 1945, did you have any connection with Bill Clark during the month of August?

A. On the 18th day of August I gave—

Mr. Patterson (Interrupting): Now just a minute, if Your Honor pleases; I object to this question upon the ground that it's irrelevant, immaterial and incompetent, and not within the issues of this case, upon the ground that it is self-serving, upon

(Testimony of Paul Au.)

the ground that it is hearsay, and upon the further ground, if Your Honor pleases, it's evidence with reference to a transaction which happened a great length of time before the date set out in this indictment.

The Court: The precise date, Mr. Patterson, is the 18th of August, of the first count of the indictment No. 19015.

Mr. Patterson: Just a minute, Your Honor; I may be wrong about that.

The Court: 19015, first count.

Mr. Patterson: Now then, if Your Honor pleases, I also ask that the whole testimony with reference to the alleged handing of money to Bill Clark on the 19th day of June 1945 be stricken from the record, upon the ground that it is too remote and is not binding upon this defendant, and it's a crime for which he is not charged, it's not set forth in any way.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: I'd like to have the answer read back; I'm not sure if he finished it.

The Court: I don't think he answered; he's been objecting to a question. Will you read the question, Mr. Reporter.

(Reporter reads last question and the unfinished answer.)

Mr. Lewis: Will you continue your answer, Mr. Au?

(Testimony of Paul Au.)

A. On the 18th day of August I gave a sealed envelope with \$900.00 to Bill Clark; I instructed to Bill Clark for him to give the envelope with the money to Captain Caminos; and the [40] following week—

Q. (Interrupting): Did you give him anything else at that time?

A. I gave one envelope with \$900.00 for Bill Clark and his boys, besides this sealed envelope.

Q. How was this second envelope?

A. The second envelope was sealed and to show the distinction it was for Captain Caminos.

Q. There were two envelopes?

A. One sealed, and one not sealed.

Mr. Patterson: I'm going to object to this line of testimony upon the same grounds previously stated, that it's irrelevant, immaterial, incompetent, it's hearsay, self-serving and not binding upon this defendant in any way whatsoever.

The Court: I'd like to have you demonstrate to me, Mr. Patterson, anything "hearsay" about a person who is stating what he said, not what he heard said.

Mr. Patterson: Now, if Your Honor pleases, my understanding of the law of hearsay is that facts are hearsay in acts as well as words; that a man can do things, he can make a move, he can make a sign, or he can take an action, and it's in the same class as hearsay; it isn't alone words spoken, according to my theory of evidence or which constitutes hearsay; the acts, the way a thing is done, are also hearsay.

(Testimony of Paul Au.)

The Court: I'm sorry; the Court will have to disagree with your abstract on hearsay, Mr. Patterson.

Mr. Patterson: This isn't the first time the Court has disagreed with me, but I hope it will be the last time; save an exception.

Mr. Lewis: You've testified as to the 18th day of August, that was the first time? [41]

A. Yes.

Q. When did you next see Bill Clark, and what happened?

A. One week after, on the 25th of August, I gave him the same kind of envelopes and gave him the same instructions with the sealed envelope of \$900.00 to give to Captain Caminos—\$500.00 rather.

Mr. Patterson: May our objection, same objection, run to this line of testimony as to the other, Your Honor.

The Court: The Court at this time will permit you to have your objection and exceptions to this line of evidence in the words and phrases used, with the exception.

Mr. Lewis: What happened on the 25th day of August, Mr. Au?

A. On the 25th day of August I gave \$900.00 in an envelope, not sealed, for Bill Clark and his boys, and one sealed envelope with \$500.00 with instructions to give to Captain Caminos.

Q. And, following the 25th day of August, when did you next contact Bill Clark?

A. On September 2nd, eight days afterwards,

(Testimony of Paul Au.)

being Sunday, I gave Bill Clark \$900.00 in an envelope, not sealed, for him and his boys, and I also gave one envelope, sealed, with \$1,500.00, with instructions to give to Captain Caminos.

Q. Anything else?

A. And one envelope, not sealed, which had \$1,500.00, for Bill Clark himself.

Q. In other words, on September 2nd you gave to Bill Clark four envelopes?

A. Four envelopes; two not sealed and two sealed envelopes.

Q. When did you next see Bill Clark, and what occurred on that occasion?

A. On the 9th of September I gave Bill Clark one envelope with \$900.00 for him and his boys, and \$500.00 in a sealed [42] envelope with instructions to give to Captain Caminos.

Q. As to the envelope containing the \$900.00, will you describe that; was it sealed or unsealed?

A. That \$900.00 envelope was not sealed.

Q. When did you next see Bill Clark, and what occurred, if anything?

A. On the 16th day of September I gave Bill Clark \$900.00, in an envelope not sealed, for him and his boys, and \$900.00 in a sealed envelope with instructions to give to Captain Caminos.

Q. Now Mr. Au, at the time of these payments that you've just described what was going on in the Honolulu Rooms?

A. Gambling every day, practically every day.

Q. Were you conducting the gambling by yourself?

(Testimony of Paul Au.)

A. I had a few partners with me, and the gambling game was running on upstairs.

Q. Who were your partners, at that time?

A. In September, 'round this time, the 16th day of the month, I had B. T. Choy, and Harry Hosoi.

Q. How about on the 18th day of August and the remainder of the month of August, did you have any partners then?

A. On the 18th day of August I had B. T. Choy and Harry Hosoi.

Q. How about on the 25th day of August, 1945?

A. 'Round that time I also had Buck Lee Kimura, that's his last name, the name I know him by, and Spike Wong.

Q. How about on the 25th day of August, did you have any connection with Harry Hosoi and B. T. Choy at that time?

A. B. T. Choy and Harry Hosoi were also my partners.

Q. Now Mr. Au, following this last payment that you've [43] described in September, what happened during the months of—the remainder of the month of September and the months of October, November and December, 1945?

A. From then throughout the year gambling was going on.

Q. Did you continue to see Bill Clark?

A. I continued to see Bill Clark.

Q. What day of the week did you see him on?

A. In the months of September, October, November, and December, every Sunday.

(Testimony of Paul Au.)

Q. And will you describe what happened on these Sundays when you saw Bill Clark, in general?

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial, incompetent, not binding upon this defendant, self-serving, hearsay.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

A. Every Sunday I saw Bill Clark I give him the "dong dong" in the envelope.

Q. What do you mean by "dong dong"?

A. Dong dong is a term in the gambling business as money in payoff to the police.

Q. Protection money, in other words?

A. Protection money.

Mr. Patterson: I ask that that answer be stricken and that counsel be instructed not to lead the witness, if Your Honor pleases.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: Now Mr. Au, coming to the first week in January, 1946, did you see Bill Clark at that time? [44]

A. On the 6th day of January, 1946, that Sunday I saw Bill Clark and I gave him \$2,100.00 in a sealed envelope, and in another sealed envelope of \$2,800.00 with instructions to give to Captain Caminos.

Mr. Patterson: What was the second amount?

A. \$2,800.00.

Mr. Lewis: Did you give him anything else at that time?

(Testimony of Paul Au.)

A. I gave \$2,100.00 for Bill Clark and his boys, and \$2,800.00 in another envelope, not sealed, for himself.

Q. How about the following week, did you see him then, the following week, in the middle of January, 1946?

A. On the 13th day of January, that Sunday I saw Bill Clark and I gave him \$2,100.00 for himself and his boys, and a sealed envelope with \$2,100.00 and I instructed him to give that sealed envelope to Captain Caminos.

Q. Now Mr. Au, after the 15th day of January —or the 13th day of January did you continue payments to Bill Clark in the manner you've described?

A. The 13th day of January was the last payment I gave to Bill Clark and the last money I sent to Captain Caminos through Bill Clark. [45]

WILLIAM K. CLARK

2. The testimony of the Territory's witness, William K. Clark (a) beginning with the line on page 167 of said transcript which reads: "Q. When you first met Paul Au in January, 1945, who was the" and ending with the line on page 169 of said transcript which reads: "The Court: Exception allowed.":

Q. When you first met Paul Au in January, 1945 who was the Captain of the Vice Squad?

A. Captain Hitchcock.

(Testimony of William K. Clark.)

Q. Did you make any arrangements with Paul Au for the protection of his gambling place?

A. No, I did not make any arrangements with Paul Au at the time; I was sent down by Captain Hitchcock to see Paul Au.

Q. And what transpired when you did see him?

Mr. Patterson: That's objected to upon the ground it's irrelevant and immaterial and incompetent, if Your Honor pleases, what arrangements he made with Captain Hitchcock.

The Court: He didn't ask what arrangements he made with Paul Au.

Mr. Patterson: For Captain Hitchcock; that's not binding upon this defendant.

Mr. Lewis: If the Court please, this will all be tied up before his testimony is finished.

The Court: Objection overruled.

Mr. Patterson: Save an exception. We object to it upon the further ground that it calls for hearsay testimony, is a self-serving declaration, irrelevant, incompetent and immaterial.

The Court: Upon the latter point the Court will caution the witness that no statements of Paul Au are admissible through your lips, but all you may have instructed Paul Au you may testify to.

Mr. Patterson: I object to that, Your Honor——

The Court (Interrupting): And Mr. Patterson's objection to that and his exception are allowed. [46]

Mr. Patterson (Continuing): Upon the grounds previously stated, especially during the early part of 1945, six or eight months before this indictment.

(Testimony of William K. Clark.)

Mr. Lewis: Mr. Clark, when you first went to see Paul Au what was the nature of your conversation with him?

Mr. Patterson: That's objected to upon the ground it's irrelevant, immaterial, and incompetent, and not binding upon this defendant.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: Did you understand the question?

A. Ask me the question again.

Q. I say, when you went to see Paul Au in early 1945 what was the nature of your conversation with him? A. An arrangement for a payoff.

Q. An arrangement for a payoff? A. Yes.

Mr. Patterson: I ask that that answer be stricken and the jury instructed to disregard it; nothing to show that Caminos was even in the picture at that time, if Your Honor pleases, from all the evidence so far he was down in the country working on some other job, there's no evidence that he knew any of these people.

The Court: The jury will be instructed if it isn't connected up, Mr. Patterson, but I can't anticipate; the objection is overruled.

Mr. Patterson: May we have an exception, if Your Honor pleases.

The Court: Exception allowed. [47]

* * *

(b) beginning with the line on page 182 of said transcript which reads: "Mr. Lewis: You started to testify, Mr. Clark that when" and

(Testimony of William K. Clark.)

ending with the line on page 183 reading: "Mr. Lewis: No further questions.":

Mr. Lewis: You started to testify, Mr. Clark, that when Hitchcock was Captain of the Vice Squad that you made some arrangement with Paul Au, is that correct? A. Yes.

Q. And that arrangement involved the payoff? A. Yes.

Q. When Captain Caminos came on the Vice Squad to relieve Hitchcock in May of 1945, —

Mr. Patterson (Interrupting): This testimony with reference to what took place during Hitchcock's time I understand our objection runs to that all the way through; it's the same point, Your Honor, upon the ground it's irrelevant, immaterial and incompetent and not binding upon this defendant.

The Court: Not binding on this defendant until connected up; he's testifying of having relayed the conversation, according to him, to Mr. Caminos when he came in office. Objection overruled.

Mr. Patterson: Save an exception.

The Court: Exception allowed.

Mr. Lewis: I don't believe I had finished my question.

(Reporter reads last question.)

Mr. Lewis (Continuing with last question): Did you have any conversation with Caminos with respect to this prior arrangement under the Hitchcock regime? A. I did.

(Testimony of William K. Clark.)

Q. And what was that conversation?

A. He asked me what was the Paul Au payoff for the protection of his game. I told him that in Hitchcock's time I was supposed to get a thousand dollars a week for the other men and the Captain was to get a thousand dollars a week, and that was paid to Hitchcock and I; but when I went to get my thousand dollars and Hitchcock's thousand—I didn't [48] look in Hitchcock's envelope at the time—I got \$900.00 in my envelope. I asked Paul Au—

Q. (Interrupting): Never mind that. In connection with your conversation with Caminos did you relate that to him? A. I did.

Q. And what did Caminos say to that?

A. Caminos says it's agreeable with him.

Q. And after that, pursuant to that arrangement, what happened?

A. We got paid off that amount pretty near every week.

Q. By Paul Au? A. Yes.

Q. And whom did you give the money that you received from Paul Au to?

A. I gave it to Captain Caminos, one envelope; the other envelope I kept and gave it to the men that worked under me, a hundred dollars apiece.

Mr. Lewis: No further questions.

* * *

(c) Beginning with the line on page 173 of said transcript which reads: "Q. What did you do with your money, Mr. Clark?" and ending

(Testimony of William K. Clark.)

with the line on page 174 of said transcript which reads: "thousand in bonds.":

Q. What did you do with your money, Mr. Clark? A. Put it in the vault.

Q. Where was that? A. National Bank.

Q. Bishop National Bank? A. Yes.

Q. How much did you accumulate?

A. \$138,000.00 in cash—\$128,000.00 in cash, and a few thousand in bonds. [49]

* * *

(d) beginning with the line on page 187 of said transcript, which reads: "Q. That makes your 'take' for that year \$39,000.00 from" and ending with the line on page 189 of said transcript which reads: "A. That's right.":

Q. That makes your "take" for that year \$39,000.00 from Paul Au? A. Yes.

Q. And all that money you put in the safe deposit box? A. Yes.

Q. Did you spend any of that money?

A. About \$10,000.00.

Q. That give you about \$29,000.00 Paul Au money in the safe deposit box? A. Yes.

Q. Were you getting money from anybody else?

A. Yes.

Q. Who else? A. Fat Loo.

Q. What place did he run? A. Fan-tan.

Q. No; what place did he run?

A. Service Hotel.

Q. And I suppose that's all? A. No.

(Testimony of William K. Clark.)

Q. Anybody else? A. Western Rooms.

Q. Western Rooms, who is that?

A. That's Small Snake.

Q. How much you got from Small Snake?

A. During 1945?

Q. Yes. [50]

A. Oh, I collected \$700.00 from him; I get \$250.00 and the Captain gets 250, and the other 200 goes to the boys 50 apiece.

Q. So you get \$250 a week, your "take"?

A. That's right.

Q. That give you about a thousand dollars a month? A. That's right.

Q. So from Small Snake you got \$12,000.00 that year? A. That's right.

Q. Did you get any bonus from him?

A. No.

Q. Did you spend any of that \$12,000.00?

A. No, I don't think so.

Q. So, you add the twelve thousand to your twenty-nine thousand, you get forty-one thousand that year, that's from Paul Au and Small Snake Lee, correct? A. Yes.

Q. Who was the other man? A. Fat Loo.

Q. Was it a big outfit like Paul Au?

A. Yes, big like Small Snake, \$700.00 a month.

Q. So you get the same thing from Fat Loo?

A. That's right.

Q. And that \$12,000.00 was in the safe deposit box? A. Yes.

(Testimony of William K. Clark.)

Q. That gives you for that year 1945 \$53,000.00, is that right? A. I think so.

Q. Any other money you made that year?

A. Yes; D. C. Chang.

Q. Was he a big outfit?

A. No; he give me in a package of cigarettes, \$70.00 wrapped up in a package of cigarettes; that \$70.00 goes to each of my boys working under me, and I had only \$250.00. [51]

Q. That \$70.00 and that \$250.00, of that total sum how much you get?

A. I get 250 of that; each of the boys gets 70 wrapped in cigarettes.

Q. So from D. C. Chang you get also \$12,000.00 a year, \$250.00 a week? A. That's right.

* * *

(e) beginning with the line on page 219 of said transcript which reads: "Q. Now in connection with your payments from these other" and ending with the line on page 221 of said transcript which reads: "envelope, it was just dished out to me that way":

Q. Now in connection with your payments from these other gambling establishments, you stated that you collected from D. C. Chang \$250.00 a week during the year 1945, for yourself?

A. Yes sir.

Q. Now, how much did you get from Small Snake?

A. I collected \$700.00 from Small Snake through Fat Loo.

(Testimony of William K. Clark.)

Q. And what did you do with that \$700.00?

A. Of that \$700.00 I gave each of the boys \$50.00, leaving \$500.00, and I told the Captain that I give him—I offered him \$300.00 an I'll take 200, and the Captain told me to split the difference, that he'll have 250 and I'll have 250.

Q. So the payment you received from Small Snake of \$700.00, out of that you kept \$250.00 and \$250.00 went to Captaain Caminos?

A. That's right.

Q. Now, how about the payments—and what were those payments for?

A. Those payments were for the protection of that gambling game.

Q. How about Fat Loo, did he run a gambling game during 1945? A. Yes.

Q. And how much did he pay you? [52]

A. \$700.00.

Q. And what did you do with that money?

A. \$50.00 for each of the boys that were working under me, \$250.00 went to the Captain, and I got \$250.00.

Q. Do you know a character by the name of "Hot Dog"? A. I do.

Q. Was he operating a gambling joint during 1945?

A. He operated it the latter part of 1945; he wasn't one of the first fellows that started.

Q. And did he make any payments?

A. Yes; he paid \$500.00 a week.

Q. What became of that money?

(Testimony of William K. Clark.)

A. Each of the boys had \$50.00 apiece, that's \$200.00; with \$300.00 left, Captain Caminos got 150 and I got 150.

Q. Do you know a character by the name of "Big Snake"? A. I do.

Q. That's not the same fellow as "Small Snake," is it A. No.

Q. Did he operate during 1945?

Mr. Lee: I object at this time. I think nothing was mentioned about Big Snake yesterday; and, furthermore, on the ground that this line of questioning is incompetent, irrelevant and immaterial, not relevant to the issues of this case where Captain Caminos is accused of receiving bribes from Paul Au through Bill Clark; and on that basis I ask that all the testimony made with reference to "Small Snake," Fat Loo, and "Hot Dog" be stricken.

The Court: Sorry, Mr. Lee; you brought it out on cross-examination, and the prosecutor has a right to complete it; objection overruled.

Mr. Lee: May I add, for the purposes of the record, that the cross-examination of these characters Small Snake, Fat Loo, and Hot Dog were in relation to the amount of money that the witness on the stand had received and the amount that he put in the safe deposit box. [53]

The Court: Well, it goes to the characterizing of that issue; objection overruled.

Mr. Lee: May I have an exception, if Your Honor please.

(Testimony of William K. Clark.)

Mr. Lewis: May we have the question, Mr. Reporter?

(Reporter reads last question.)

The Court: "Big Snake."

A. I don't remember whether he operated in 1945; he was in partnership with "Small Snake"; they had some argument, and he moved out; and I don't know whether it was 1945 or 1946, and "Big Snake" didn't last long when the investigation came up, it was maybe a month or a month and a half, maybe longer, maybe less, I'm not sure; but I got paid from him.

Q. You got paid by Big Snake either in the latter part of 1945 or 1946? A. Yes.

Q. And how much did Big Snake pay you?

A. \$700.00.

Q. And what became of that money?

A. \$50.00 went for each of the boys; \$500.00 left, \$250.00 went to Captain Caminos and I had \$250.00.

Q. Now these payments from these other persons Small Snake, Fat Loo, Hot Dog and Big Snake, how were those payments made?

A. Those payments were made through Fat Loo; Fat Loo done the collecting from the other gambling joints on it, and then I got the money; and most of those guys paid about the same date.

Q. Were the payments made in currency?

A. Yes.

Q. How did you receive that money?

A. I received that money \$700.00 in cash; it

(Testimony of William K. Clark.)

wasn't in the envelope, it was just dished out to me that way. [54]

* * *

THOMAS C. RODENHURST

3. The testimony of the Territory's witness, Thomas C. Rodenhurst, beginning with the line on page 229 of said transcript, which reads: "Q. During the month of November, 1945, did you see the" and ending with the line on page 232 of said transcript, which reads: "Mr. Lewis: No further questions"?

Q. During the month of November, 1945, did you see the defendant Clarence Caminos?

A. I did.

Q. Did you see him at the Pearl City Police Station? A. I did.

Q. Did you have a conversation with him?

A. I did.

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial and incompetent, not within the issues of this case.

The Court: I have no idea whether it is or not, Mr. Patterson; objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: Will you tell us what that conversation was, Mr. Rodenhurst, describing the circumstances?

A. Mr. Caminos came to my office one day to talk to me about gambling activities in my district; he said in part that he had—

(Testimony of Thomas C. Rodenhurst.)

Mr. Patterson (Interrupting): Now just a minute; I object to any testimony of this witness about any gambling activities in that district covering the year 1945; it's an entirely separate matter, has nothing to do with this particular issue at all, it's not binding on this defendant; we have no opportunity to meet it, it's conversation that took place about something in another district altogether, and it is not in corroboration and it is no part of the evidence in this case, and it tends to establish a separate and distinct transaction which is not in issue here in any way whatsoever.

The Court: Objection overruled. [55]

Mr. Patterson: Save an exception.

The Court: Exception allowed.

Mr. Lewis: Will you continue?

A. He talked to me about gambling activities in my district with reference to cockfights; he wanted me to assist him in permitting the games to be held—

Mr. Patterson (Interrupting): May our objection run to all this line of testimony, if Your Honor pleases?

The Court: Yes.

A. He wanted me to assist him in permitting the game to be run in the district of Ewa; he said that he'd like to establish these cockfights, particularly down at the Ewa Beach Lots section, and that he would attend to all the particulars and make all the arrangements. I asked him what part I would play in it, and he said, "Let them play,"

(Testimony of Thomas C. Rodenhurst.)

and, he said, "You'll get yours"; and I said, "What do you mean by that, how much are you going to give me, is that what you mean?" He said, "Yes." He would not stipulate as to any amount, he just said, "You'll get yours." I said, "What are your plans?" He said, "To permit the game to run" in my district one week, the following week to go some place else, in Wahiawa, Kailua, and then down to Kaneohe another week, and then go back to Honolulu, and then revolve it around the district in that respect. I told Mr. Caminos that I was not interested in any such plan, that I'll have no part of it, that I was not interested in any such money under any circumstances, and that I refused to be a part of his plan, that if he wanted to go ahead with his own idea that's his business but I'll have no part of it and any games that are run in my district that I know about or my men know about will be raided.

Q. Did he say anything further than that?

A. Well, he told me not to be a "damn fool," he said, "Only a fool dies poor"; then I said, "Then I'm a damn fool, because I don't want any part of you and I'll die poor." [56]

Q. Mr. Rodenhurst, you said he came to you to talk about gambling activities and in that conversation the matter of cockfighting came up; what kind of cockfights were these?

Mr. Patterson: That's objected to upon the same ground, may our exception run to all this line of testimony, please?

(Testimony of Thomas C. Rodenhurst.)

The Court: Yes.

A. Cockfights that are held by Filipinos; they use gaffs on the roosters and they bet on these games.

Q. They bet on the games? A. Yes.

Mr. Patterson: I object to that upon the ground it hasn't been shown; it's leading and suggestive, not a proper question.

The Court: Counsel is simply obviously trying to catch what the witness' word was; the witness had used that phrase, and he asked him——

Mr. Patterson (Interrupting): The witness did not use that phrase.

Mr. Lewis: We call for the record.

The Court: I'm sorry, Mr. Patterson; the Court heard.

Mr. Patterson: Can I have the witness' answer, Your Honor?

The Court: Yes.

Mr. Patterson: What was the witness' answer?
(Reporter reads last answer.)

Mr. Patterson: I withdraw my remark, Your Honor; I don't withdraw my objection and exception to this line of testimony.

The Court: I understand; the whole conversation is under your objection and exception, Mr. Patterson.

Mr. Lewis: No further questions. [57]

* * *

LAWRENCE FAT LOO

4. The testimony of the Territory's witness, Lawrence Fat Loo: Beginning with the line on page 249 of said transcript which reads: "Mr. Lewis: Mr. Loo, how did you make a livelihood?" and ending with the line on page 254 of said transcript which reads: "Mr. Lewis: No further cross-examination":

Mr. Lewis: Mr. Loo, how did you make a livelihood? A. Gambling.

Q. You were a professional gambler?

A. Yes.

Q. Did you operate a gambling place in the year 1945? A. I did.

Q. And where was that located?

Mr. Patterson: That's objected to upon the ground it's irrelevant, immaterial and incompetent, not binding upon this defendant; should be connected up.

Mr. Lewis: If the Court please, we'll connect it up in connection with the previous testimony.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

A. What was the question again?

Mr. Lewis: Where did you operate this gambling establishment?

A. On Pauahi and Maunakea.

Mr. Patterson: Talk a little louder, please, so we can hear you.

A. On Pauahi and Maunakea.

Mr. Lewis: In the City and County of Honolulu?

(Testimony of Lawrence Fat Loo.)

A. Yes.

Q. And did you operate there in the months of August and September, 1945? A. Yes.

Q. Will you tell us how you were able to operate? A. Well, we were paying—— [58]

Mr. Patterson (Interrupting): Now I object to this testimony; you can see what is going to be—— upon the ground it's irrelevant, immaterial and incompetent, not binding upon this defendant, it's hearsay, not within the issues of this case; anything that this man done is not binding upon Caminos.

The Court: You're a better mind-reader than the Court, Mr. Patterson; I'll have to overrule the objection from what the witness has said.

Mr. Patterson: It's right there; you don't have to be a mind-reader.

The Court: Your objection and exception may go to the entire line.

Mr. Lewis: May we have the question read?

(Reporter reads last question and incomplete answer.)

The Court: Speak up, Mr. Loo.

A. Yes. We were paying Sergeant Clark to—— Juror (Interrupting): I can't hear at all.

Mr. Lewis: Members of the jury can't hear you, Mr. Loo; talk up loud.

A. Well, we were paying Sergeant Clark \$700.00 a week so that we will not be raided.

Q. And how long did those payments continue?

Mr. Patterson: I ask that that answer—I didn't know he had finished; I ask that that answer be

(Testimony of Lawrence Fat Loo.)

stricken upon the ground that it's irrelevant, immaterial and incompetent, it's not within the issues of this case, it's an entirely different transaction than anything that is alleged in this indictment; this man is charged with accepting bribes from Paul Au, and for this man to testify about a supposed payment to a third person with reference to a game and a different man altogether is an entirely different crime which we'll be prepared to meet if it's ever presented, if it isn't [59] presented at this time the defense is entitled to be informed and, Your Honor, we come in here in a great crime that's given in evidence here of the crime alleged, the crime between him and a man that he was bribing, and it's not binding upon Caminos; Your Honor, it's an entirely separate transaction; we have authorities about that if Your Honor wants to see them.

The Court: The Court is familiar with the general background; the evidence is permitted solely from the standpoint of the law allowing evidence of other like transactions to bear upon the credibility of witnesses in the specific transaction now charged, now too remote in time but of the same character; and your objection is overruled.

Mr. Patterson: We'd like to cite authorities on that, Your Honor.

The Court: I'm not wasting time now; you can do it with the appellate court; you've got your exception.

(Testimony of Lawrence Fat Loo.)

Mr. Patterson: I'm not asking about any appellate court, Your Honor; I'd like to be heard.

The Court: I have ruled; we're pau.

Mr. Patterson: I save an exception, if Your Honor pleases, to not being allowed to address the Court; I assign it as error, prejudicial to the rights of this defendant.

The Court: Your assignment is noted; the Court has ruled, and that is ended on this episode, Mr. Patterson; you'll kindly sit down.

Mr. Patterson: We save an exception, if Your Honor pleases.

Mr. Lewis: Mr. Loo, you stated that you paid to Sergeant Clark the sum of \$700.00 a week; how long did those payments continue?

A. They continued up to the week of the police investigation. [60]

Q. Do you recall the date of that?

A. I don't remember.

Q. Do you remember what year it was in?

A. 1946.

Q. Do you remember the month or what part of the year it was in? A. The early part.

Q. Mr. Loo, did you make collections from any other gambling house other than your own?

A. I did.

Q. What gambling houses were those?

A. One on Beretania Street.

Q. Who was the operator of that one?

A. Hong Lee.

(Testimony of Lawrence Fat Loo.)

Q. Is he also known as "Small Snake"?

A. Yes.

Q. How much did you collect from him?

A. 700.

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial and incompetent, not within the issues of this case, the collection of money by this man from a man by the name of "Small Snake" who was never in this case, who has never been mentioned in it, and to have this man testify about money which he paid to him, to "Small Snake" for a certain bribe is not binding upon the defendant Caminos.

The Court: The objection is of the same character; the Court has understood, Mr. Patterson, that your objection similarly stated goes to the entire line; I don't know that there's any necessity for specifically renewing it; that Court's faith and confidence in giving it to you that way has not been withdrawn; I understand it goes to the entire line of this witness, and so stated to you when you made your first objection. [61]

Mr. Patterson: I think this question is a little different; we save an exception.

The Court: Exception allowed; and I again state that your objection and exception goes to the entire line of the evidence from this witness having to do with other offenses.

Mr. Patterson: On every possible ground that can be put forth.

(Testimony of Lawrence Fat Loo.)

The Court: Yes, that you've put forth, and if any new ones you're at liberty to state them.

Mr. Lewis: Mr. Loo, you say you collected from "Small Snake"? A. Yes.

Q. How much did you collect from him?

A. \$700.00 a week.

Q. During what year? A. '45.

Q. 1945? A. Yes.

Q. What did you do with that money that you collected from "Small Snake"?

A. I gave that to Bill Clark.

Mr. Patterson: Speak up, Mr. Loo.

Mr. Lewis: You turned that over to Bill Clark?

A. Yes.

Mr. Lewis: No further questions. [62]

* * *

RICHARD KAZUO MIKAMI

5. The testimony of the Territory's witness, Richard Kazuo Mikami, beginning with line on page 774 of said transcript which reads: "Q. Mr. Mikami, in the latter part of 1945, in late November," and ending with the line on page 809 of said transcript which reads: "The Court: Motion is denied":

Q. Mr. Mikami, in the latter part of 1945, in late November, did you pay to Clarence Caminos the sum of \$200.00?

Mr. Patterson: One minute. That's objected to upon the ground it's a question about a collateral matter; we're certainly not going to try this case

(Testimony of Richard Kazuo Mikami.)

now, if Your Honor pleases; it's a collateral issue, irrelevant, immaterial and incompetent, and not part of the prosecution's case in chief; if we go into this then we'll have to try this thoroughly.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

A. What was the question?

The Court: Read the question back to him.

(Reporter reads last question.)

A. Yes, sir; for the use of the beach house at Mokuleia.

Mr. Lewis: Kazuo, did you ever pay Clarence Caminos any money for any other purpose?

A. No, sir.

Mr. Patterson: That's objected to upon the ground that the proper foundation has not been laid; it's irrelevant, immaterial and incompetent, not part of the case in chief, and it's trying to bring in a collateral issue which is not proper in this case and which is not relevant; it is immaterial, irrelevant and incompetent even in the case in chief in a case of this kind.

The Court: The objection will be sustained on the framing of the question; "ever" includes a long time.

Reporter: It was answered, Your Honor.

Mr. Patterson: What was that answer?

Reporter: "No, sir." [63]

The Court: Do you want the answer stricken, Mr. Patterson?

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Yes, I want it stricken; I don't think it has any business in here.

The Court: The answer may be stricken.

Mr. Lewis: Mr. Mikami, at the time you gave him the money didn't you tell him that you were operating a crap game in the back of the Country Motors?

Mr. Patterson: That's objected to upon the ground it's irrelevant, immaterial and incompetent, seeking to bring in a collateral issue which we're not prepared to try at this time, if Your Honor pleases, and which is not proper examination although the witness has already said "no" to this question. I still ask that that answer be stricken, upon the ground that it's not competent in this case; we're not prepared to try any other cases.

The Court: The precise objection made the Court overrules.

Mr. Patterson: We save an exception, if Your Honor pleases.

Mr. Lewis: What was the answer?

A. What's the question?

(Reporter reads last question.)

Mr. Patterson: We object to it upon the ground that the proper foundation had not been laid too, Your Honor.

The Court: Objection overruled.

A. I don't remember.

Mr. Lewis: You don't remember?

A. Yes, sir.

Q. Do you deny it? A. No, sir. [64]

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Just a minute. I ask that the answer be stricken for the purpose of an objection.

The Court: Well, let's hear the objection that you want to make.

Mr. Patterson: I object to the question upon the ground that it is irrelevant, immaterial and incompetent, upon the ground that it is not cross-examination, upon the ground that the proper foundation has not been laid; upon the ground that the matter seeks to bring out a collateral matter and that the prosecution is bound by the answers heretofore given, and it seeks to bring evidence in here to contradict a collateral matter and trying another issue upon which this defendant is not charged or indicted.

The Court: The objection will be considered as though made before the answer was given; and it is overruled.

Mr. Patterson: Save an exception, if Your Honor pleases.

The Court: Exception allowed.

Mr. Patterson: What was that last answer?

Reporter: The last answer was, "No, sir."

Mr. Lewis: Mr. Mikami, do you recall making a statement in the office of the Public Prosecutor on or about the third day of April, 1946, at about 2:55 o'clock in the afternoon?

A. Yes, sir.

Q. And at that time do you recall——

Mr. Patterson (Interrupting): Now we object to this impeachment of their own witness, as to

(Testimony of Richard Kazuo Mikami.)

statements formerly made, upon the ground that it's irrelevant, immaterial and incompetent, nor a proper part of their case in chief, that it's not proper examination at this time, it comes too late, it was part of their case in chief if they wanted to put it in; and upon the ground that it seeks to bring in a collateral issue which is not proper at this proceeding of this case especially, not pertinent evidence at this time.

The Court: The objection is overruled. [65]

Mr. Patterson: Save an exception.

Mr. Lewis: May we have the question?

(Reporter reads last question, unfinished.)

Q. Do you recall making a statement in the Public Prosecutor's office on the occasion I have just described? A. Yes, sir.

Q. Do you recall the following question and answer being put to you—

Mr. Patterson (Interrupting): We object to any questions and answers about—

The Court: Mr. Patterson, reserve your objection until the question has been put and not interfere with counsel's opportunity to put a question.

Mr. Patterson: I most respectfully, Your Honor, submit that the proper time to make an objection is where you can see what's coming, before it is asked; and I except to being disallowed that privilege.

The Court: Proceed, Mr. Lewis.

Mr. Lewis: Do you recall the following question

(Testimony of Richard Kazuo Mikami.)

and answer: "In what manner was this money"—referring to the \$200.00—"in what manner was this money you gave him?" Answer: "I told him I'm having a crap game and I just gave him that \$200.00." Do you recall that?

Mr. Patterson: The question is objected to upon the ground it is irrelevant, immaterial and incompetent; it is irrelevant; upon the ground that they're seeking to impeach their own witness; upon the ground that the matter is collateral, and seeking to bring into the issues something that cannot properly be brought in at this time; it was never evidence in this case; and upon the further ground that they are bound—there is not—the answer—the question asked is not seeking or impeaching any testimony or contradicting any testimony which has been developed [66] during the issues in this case; it's entirely foreign to anything that has ever come into this case before; and upon the ground that it is a collateral issue and is not binding upon this defendant at this time.

The Court: Are you through?

Mr. Patterson: Yes.

The Court: Objection overruled.

Mr. Patterson: Save an exception, if Your Honor pleases.

The Court: Exception allowed. Was this answered, Mr. Reporter?

Reporter: No answer that I could hear.

Mr. Lewis: I'd like to have the question again, Your Honor.

(Testimony of Richard Kazuo Mikami.)

The Court: Read the question.

(Reporter reads last question.)

A. I don't recall that.

Mr. Lewis: Do you deny that you made such a statement? A. I don't deny that.

Mr. Patterson: Just a minute; same objection to this question, if Your Honor pleases.

The Court: Same ruling.

Mr. Patterson: Save an exception.

The Court: Read the question, Mr. Reporter.

(Reporter reads last question and answer.)

Mr. Lewis: Kazuo, do you have any present recollection now of this incident when this \$200.00 was given to Captain Caminos?

Mr. Patterson: Objected to upon the same grounds, if Your Honor pleases.

The Court: Same ruling.

A. I didn't get the question.

The Court: Read the question. [67]

(Reporter reads last question.)

A. Yes—but not on that question.

Mr. Lewis: What?

A. I didn't understand that.

The Court: Referring to time that you say the incident actually happened of the \$200.00; do you remember now the circumstances around that time?

A. For what purpose I gave that money?

The Court: Anything that happened at that time; do you now remember?

A. Yes, sir.

(Testimony of Richard Kazuo Mikami.)

Mr. Lewis: Will you tell the entire transaction—

Mr. Patterson (Interrupting): Objected to—oh, pardon me, did you finish?

Mr. Lewis: Will you describe this giving of the money to Captain Caminos and what if anything you said to him at that time?

Mr. Patterson: Same objection, if Your Honor pleases, to that question.

The Court: Same ruling.

Mr. Patterson: Upon the further ground it's leading and suggestive and argumentative.

The Court: The only leading part and the only argumentative part is contained in your objection, Mr. Patterson.

Mr. Patterson: We save an exception to the ruling of the Court.

The Court: Mr. Reporter, will you now re-read the question again. Listen, Kazuo, to the question, please.

A. Yes, sir.

(Reporter reads last question.)

A. Well, I can't give you the exact words what I said, but [68] I told Mr. Caminos that he'll keep the money.

Q. What was the answer?

A. I told Mr. Caminos to keep the money because I used the beach home; he refused it that time, but I insist he take the money, you see; we went down there a couple of times with a lot of couples and used his beach home and his groceries

(Testimony of Richard Kazuo Mikami.)

and even the beer in the icebox; I don't know what the boys did, but when I came back I felt kind of guilty not paying him anything.

Q. At first he refused to take the \$200.00?

A. Yes, sir.

Q. Then what happened?

Mr. Patterson: May my objection and exception run to all this line of testimony?

The Court: Your original objections and all repetitions thereof will be considered as applying to the whole incident, Mr. Patterson.

Mr. Patterson: All right, Your Honor.

A. But I insisted him for taking the money because I feel better if he do take it, because in the future maybe I can borrow it again.

Mr. Lewis: And he did take it?

A. Yes, sir.

Q. Did he ever return that money to you?

A. No, sir.

Q. What? A. No, sir.

Q. Kazuo, did you give him this money in connection with this gambling game?

A. No, sir.

Mr. Patterson: Same objection, on the ground it presumes something not in evidence. [69]

The Court: Will you allow the attorney to finish his question, Mr. Patterson?

Mr. Patterson: If Your Honor pleases, yesterday I was accused of not being quick enough, and the man started, the answer come before I make my objection.

(Testimony of Richard Kazuo Mikami.)

The Court: The Court has ears, eyes, and is aware of the present incident; we're not referring to yesterday. Now, Mr. Patterson, will you desist until counsel finishes his questions? You can observe both counsel and the witness.

Mr. Patterson: Yes, but this question that was asked, this man was starting to answer it.

The Court: Yes, and you were wandering back and forth by the jury box. The Court will now ask you to be seated until we're ready, then object.

Mr. Patterson: I come over here because I have difficulty in hearing.

The Court: I have no objection to your moving your chair over near the jury box, but to walk back and forth while counsel is examining the witness is disruptive of orderly procedure; and the Court is simply asking you in courtesy to do so. Now, have you got a question, Mr. Lewis?

Mr. Lewis: Can we have the question read, if Your Honor please?

Mr. Patterson: And the answer.

(Reporter reads last question and answer.)

Mr. Patterson: There was an answer, wasn't there?

Reporter: Yes.

Mr. Patterson: Now Your Honor, may I ask that that answer be stricken for the purpose of interposing an objection?

The Court: You may interpose an objection; have you any new objection?

Mr. Patterson: I'm asking at this time that the

(Testimony of Richard Kazuo Mikami.)

answer [70] of this witness be stricken so that I can interpose an objection.

The Court: I said you may, Mr. Patterson.

Mr. Patterson: I take it from that that the answer is stricken, Your Honor.

The Court: That's what I told you twice; now do you want it a fourth time?

Mr. Patterson: Have you my objection there, Mr. Reporter? Will you repeat it.

Mr. Lewis: There's no objection to having the answer stricken.

The Court: The motion to strike has been granted.

Mr. Patterson: Now, I object to the question—will you read the question so I can get it?

(Reporter reads last question as well as the answer.)

The Court: That answer is stricken.

Mr. Patterson: Now, I object to that upon all the grounds previously stated, upon the ground that it presumes something not in evidence.

The Court: The Court will construe your last form of objection as referring to its being leading and suggestive, Mr. Patterson; I'll sustain it on that construction of your objection.

Mr. Lewis: Kazuo, before coming to trial—before coming here to testify today, has anybody spoken to you about this case? A. No, sir.

Q. If you were to be shown the statement that you made at the Public Prosecutor's office on the

(Testimony of Richard Kazuo Mikami.)

date in question, that is, April 3, 1946, would that help you refresh your recollection?

Mr. Patterson: Objected to upon the grounds previously [71] stated, upon the ground it's leading and suggestive, improper, not within the issues, collateral issue, attempt to impeach their own witness.

The Court: Objection overruled.

Mr. Patterson: Not proper rebuttal, if Your Honor pleases; it rebuts nothing.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Read the question to the witness, Mr. Reporter.

Mr. Lewis: I'll reframe the question; strike that question and reframe it.

Q. Kazuo, would you like to refresh your memory or, wouldn't your memory be refreshed as to the incidents that happened with Caminos in late November, 1945, if you were to be shown your statement made in the Public Prosecutor's office?

Mr. Patterson: Same objection, if Your Honor pleases.

The Court: Same ruling.

A. I didn't understand that.

Mr. Lewis: Would you like to read your statement? A. No, sir.

Q. Will you read your statement?

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial, incompetent; its argumentative, leading and suggestive; upon all grounds previously stated.

(Testimony of Richard Kazuo Mikami.)

The Court: The objection to this question will be sustained; the witness said he didn't want to read it; he can't be compelled to read it.

Mr. Lewis: Kazuo, at the time that you made a statement in the Public Prosecutor's office on the occasion we've described, back in April, 1946, do you recall the following [72] question and answer: "What did you tell him before you gave him the money?" And the answer: "I'm having a crap game sometimes."

Mr. Patterson: That's objected to upon the ground it's already asked and answered; and upon all of the grounds previously stated to the questions that have been asked this witness, Your Honor.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Read the question, Mr. Reporter, to the witness.

(Reporter reads last question and answer.)

A. I don't remember that.

Mr. Lewis: Do you deny that you made such a statement? A. No, sir.

Mr. Patterson: Same objection to this last question, if Your Honor pleases.

The Court: The Court has granted you the same objection all the way through, Mr. Patterson, and the same exception.

Mr. Lewis: Kazuo, do you recall making on the same occasion in the Public Prosecutor's office, do you recall the following question and answer: (Q.)

(Testimony of Richard Kazuo Mikami.)

“How come you give him this \$200.00?” And your answer: “Well, I figured he was on the Vice Squad, so if I gave him he might overlook my place”; do you remember that?

Mr. Patterson: Now, we object to that on all of the grounds previously stated, and upon the further ground it's leading, suggestive and argumentative.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

A. I don't remember. [73]

Mr. Lewis: Do you deny that you made such a statement there? A. No, sir.

Q. You might have made such a statement?

A. I might have made such a statement but I don't remember.

Q. And if you made such a statement it would be true?

Mr. Patterson: Object to that upon the ground it's argumentative; upon all the grounds previously stated; it's leading, argumentative, calls for the conclusion and opinion of the witness, seeks to impeach their own witness, it's not proper rebuttal.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

Mr. Lewis: Let's have the question again, Mr. Reporter.

(Reporter reads last question.)

A. Do I have to answer that question, Your Honor?

The Court: Yes.

(Testimony of Richard Kazuo Mikami.)

Mr. Lewis: Are you afraid of incriminating yourself, is that it?

Mr. Patterson: Same objection, if Your Honor pleases.

The Court: Objection overruled.

A. The question, please?

(Reporter reads last question.)

A. No, sir.

Mr. Lewis: Well, will you answer the question?

A. What was the question?

(Reporter reads last question.)

A. That I cannot say.

Mr. Patterson: Same objection, if Your Honor pleases.

Reporter: I got an answer, if Your Honor please.

The Court: What's the answer?

Mr. Lewis: Do you mean you don't know whether it's [74] true or not?

A. Because I don't know whether I said that or not.

Q. The question is this, Kazuo: If you made such a statement, the statement being: "Well, I figured he was on the Vice Squad, so if I gave him he might overlook my place"—

Mr. Patterson (Interrupting): That's objected to upon the same grounds, and it's already been asked and answered, and it's argumentative.

Mr. Lewis: I'd like to finish my question.

The Court: Mr. Patterson, will you sit down, as the Court requested you to sit down?

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: I can hear over there.

The Court: All right; the Court has offered you a chair right up by the railing, so that you can see the mouth of the Public Prosecutor when he finishes his question, and if you had been attentive you'd have seen it; the question wasn't even completed. Now, Mr. Prosecutor, you're given an opportunity to reframe your question.

Mr. Patterson: Will the witness be instructed not to answer the question until I have a chance to object, please?

The Court: Kazuo, when Mr. Lewis has finished his question you wait a minute and give Mr. Patterson ample time to rise; he's seated now, you see, and he's right in front of you.

A. Yes.

The Court: Listen to the question; wait a second; if Mr. Patterson wants to rise you let him talk, then if you don't know the question and I allow it you can ask that it be read.

Mr. Lewis: Kazuo, if you made the statement in the office of the Public Prosecutor at the time just described—you remember that time? [75]

A. Yes, sir.

Q. If you made this statement: "Well, I figured he was on the Vice Squad, so if I give him he might overlook my place"; now, if you made that statement, then it was true? A. No, sir.

Mr. Lewis: May it be stricken, if Your Honor please?

The Court: The answer may be stricken.

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Objected to upon all the grounds formerly stated; upon the ground it's not rebuttal; upon the ground it's additional impeaching evidence; and upon the ground it's argumentative.

The Court: The objection is overruled. Now, Mr. Reporter, will you read the question; and Mr. Kazuo, when the Reporter reads the question you may answer it without waiting any longer for Mr. Patterson; he's made his objection and I have overruled it. Read the question, Mr. Reporter.

Reporter: There was an answer, Your Honor.

(Reads question and answer.)

The Court: Let the answer stand, and the objection as made before the answer was given.

Mr. Lewis: Kazuo, do you mean by your statement now that the answer you gave at the Public Prosecutor's office was a false statement?

Mr. Patterson: Objected to upon the ground it's argumentative, and on all the grounds previously given.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Read the question now, Mr. Reporter, to the witness.

A. No, sir.

The Court: Did you get the question?

A. Let me get the question again. [76]

(Reporter reads last question.)

A. No, sir.

Mr. Lewis: Well, then, which statement is correct?

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Same objection, if Your Honor pleases.

The Court: Same ruling.

A. The last statement.

Q. And what is that?

The Court: Speak up loud, Kazuo, so the jury can hear you.

A. That I didn't say to him when I—

Juror (Interrupting): Your Honor, we can't hear him.

The Court: Kazuo, tell the jury so that they can hear you; you've got a voice, look in that direction, talk to them.

A. What was the question; question and answer for the last couple, so that I can recall?

The Court: Read the last couple of questions, the witness asks.

A. That wasn't my answer; I just asked when.

Mr. Lewis: Well, tell the jury what the answer is.

A. I want the Reporter to give the last couple of questions.

The Court: Now, Mr. Reporter, what did you get of the witness' statement?

Reporter (Reading): "That I didn't say that to him when I—"

The Court: Is that all you got of the last statement?

Reporter: Yes, sir.

The Court: Kazuo, speak up what your answer is, will you please, so that the jury and the Re-

(Testimony of Richard Kazuo Mikami.)

porter and the parties and the Court can hear you.

A. Yes, sir.

Mr. Lewis: Kazuo, you've given—you've stated two [77] different versions of the reason for giving this \$200.00; one, you said it was for the use of his house, the use of Caminos' house; the other which you stated in the Public Prosecutor's office was that you figured he was on the Vice Squad and he might overlook your place; now, which one of those statements is correct?

Mr. Patterson: Objected to upon the same ground previously stated, upon the ground it's already been asked and answered.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Now, Mr. Reporter, will you read this question to the witness? Kazuo, listen to the question, please, and talk to the jury your answer so that they can hear you.

(Reporter reads last question.)

A. For the use of the house.

Mr. Patterson: Did the jury hear that?

Mr. Lewis: Then, Kazuo, you deny that your statement in the Public Prosecutor's office is correct?

Mr. Patterson: Same objection, if Your Honor pleases; upon the further ground that it's argumentative.

The Court: Objection sustained. I think it's covered, Mr. Lewis.

(Testimony of Richard Kazuo Mikami.)

Mr. Lewis: I beg your pardon?

The Court: I think the situation is covered, as to the inconsistency and what his present intent is.

Mr. Lewis: Kazuo, have you talked to him out in front of the courthouse about two afternoons ago when the bus was out there?

Mr. Patterson: Objected to upon all the grounds previously stated; upon the ground it's irrelevant, immaterial [78] and incompetent.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

A. What was the question, sir?

Mr. Lewis: Read the question, Mr. Reporter.

(Reporter reads last question.)

A. Yes, sir.

Q. The answer is, "Yes, sir"?

A. Yes, sir.

Q. You did talk to Caminos then?

A. Yes, sir.

Q. What was the nature of that conversation?

Mr. Patterson: Same objection, if Your Honor pleases, upon the ground it's hearsay, irrelevant, immaterial and incompetent.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: Read the question, Mr. Reporter.

(Reporter reads last question.)

A. I said, "How are you, how are you feeling?"

Mr. Lewis: What else?

Mr. Patterson: Objected to upon the grounds

(Testimony of Richard Kazuo Mikami.)

previously stated; upon the ground it presumes that something else was said.

The Court: The form of the question is objectionable.

Mr. Lewis: Did you discuss with Mr. Caminos the matter of the use of his place, his house, on this previous occasion? A. No, sir.

Q. Did you discuss with Mr. Caminos the matter of your giving him this \$200.00?

A. No, sir.

Q. You never mentioned that at all? [79]

A. No, sir.

Q. Kazuo, do you know a police officer named Tom Rodenhurst? A. Yes, sir.

Q. Did you also give him \$200.00?

Mr. Patterson: That's objected to upon the ground it's irrelevant, immaterial and incompetent, not rebuttal testimony, if Your Honor pleases; and upon all the grounds previously stated.

Mr. Lewis: If the Court please, I think we have — that was a matter brought out on cross-examination of our witness Rodenhurst.

The Court: Yes, but, Mr. Lewis, the rule that Mr. Patterson has attempted to invoke as to collateral matters does apply to collateral witnesses. The Court in refusing to sustain the objection in connection with transactions with Mr. Caminos is that he is the defendant, when collateral matters of similar character are open to evidence; but the questions brought out or attempted to be brought out from Mr. Rodenhurst on cross-examination by

(Testimony of Richard Kazuo Mikami.)

the defendant, the record is bound by that and further corroboration or going into it is not permitted. The Court sustains the objection.

Mr. Lewis: If the Court please, I'd like to be heard on that.

The Court: The Court sustains the objection.

Mr. Lewis: Kazuo, when were you operating a gambling game at your establishment, if at all?

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial and incompetent; it's leading, suggestive, presumptive; upon all the grounds previously stated, and that it's not part of the rebuttal in this case.

The Court: The last part of your objection is sustained. [80]

Mr. Lewis: Kazuo, in November of 1945 were you operating a gambling game in the back of your establishment?

Mr. Patterson: Same objection, if Your Honor pleases.

The Court: Same ruling; the objection is sustained.

Mr. Lewis: Kazuo, at the time that you gave Mr. Caminos this \$200.00 what did he do with the money?

Mr. Patterson: Objected to upon the ground it's irrelevant, upon all the grounds previously stated, upon the ground it presumes that he knows what he did with some alleged or imaginary two hundred dollars.

The Court: Objection overruled.

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Save an exception, if Your Honor pleases.

The Court: Read the question to the witness.

(Reporter reads last question.)

A. I don't know what he did with the money.

Mr. Lewis: In what form was this \$200.00—in cash, or in check?

Mr. Patterson: Objected to upon the ground it's irrelevant, immaterial and incompetent, not rebuttal testimony, if Your Honor pleases, and all the grounds previously stated.

The Court: Mr. Patterson, the Court would like an understanding with you. You've asked for the objection of the character you just stated to go to the whole line of the incident of this witness with Mr. Caminos, and I granted that; and in spite of my granting it you arise and interrupt the proceedings with repetition. Now, which do you want; do you want the objection to go to the whole testimony, to this line, that you've made, and all ramifications of it; or do you want me to withdraw that ruling and let you make a separate and single repetition of the same objection to every question? I'd like to have an understanding between you and myself as the Court; which is it? [81]

Mr. Patterson: Very easy, Your Honor. The running objection to this was—he was going through a new picture; the reason I made the running objection was that—because I thought it wasn't noted. As long as this objection runs to every

(Testimony of Richard Kazuo Mikami.)

question that this man may possibly be asked on the witness stand, then I'm satisfied, Your Honor.

The Court: That's the purpose of my general objection offered to you and your exception. Now, do you want that, or don't you?

Mr. Patterson: I want it.

The Court: All right; then please subside with repetitions of it.

Mr. Patterson: I am especially cautious because the Supreme Court told me I didn't make enough objections.

The Court: Mr. Reporter, will you now read the question to the witness.

(Reporter reads last question.)

A. In cash.

Mr. Lewis: And where did you give it to him?

A. In front of my service station.

Q. That's at the Country Motors?

A. Yes, sir.

Q. And when you gave it to him did you see what he did with it?

A. He took it, that's all; I don't know what he did after that.

Mr. Patterson: Could I have that answer; I can't hear from here.

(Reporter reads last answer.)

Mr. Lewis: Did you observe what he did in your presence with that money?

A. I said he took the money. [82]

(Testimony of Richard Kazuo Mikami.)

Q. Where did he put it?

A. Must be in his pockets.

Mr. Lewis: If Your Honor please, could we have a short recess at this time?

The Court: We'll take a recess at this time.

(Recess—10:22 to 10:32 a.m.)

Mr. Lewis: Kazuo, how many times did you use Caminos' beach house?

Mr. Patterson: Our objections run to this line of testimony?

The Court: Yes.

Mr. Lewis: That is, prior to the time you gave him this \$200.00?

A. A couple of times, a couple of week-ends.

Q. A couple of week-ends? A. Yes, sir.

Q. And what year was that?

A. I can't exactly recall—either 1943 or 1944, somewhere 'round there.

Q. 1943 or 1944. A. Yes, sir.

Q. And you didn't give him the money until 1945? A. Yes, sir.

Q. And how many people used the beach place with you?

A. Oh, about four or five couples went down there.

Q. Where is this beach place located?

A. Mokuleia.

Q. Mokuleia? A. Yes, sir.

Q. Kazuo, at the time you made this statement in the Public Prosecutor's office—that's April 3rd, 1946—you went up there with Police Commissioner Richard Kellett? [83] A. I think so.

(Testimony of Richard Kazuo Mikami.)

Q. You know it, don't you?

A. If I seen him I know him.

Q. And at the time you made that statement Mr. Jardine—do you know Mr. Jardine?

A. Yes, sir.

Q. He was present? A. Yes, sir.

Q. Mr. Cederloff? A. He was there.

Q. He was there? A. Yes, sir.

Q. Were there other members of the Police Commission there, too? A. I don't think so.

Q. And at that time you didn't tell them anything about this use of the Caminos beach place, did you? A. I don't remember.

Juror: Talk a little louder.

A. I don't remember.

Mr. Lewis: I'd like to show you a statement that you made in the Public Prosecutor's office at that time; will you examine that?

Mr. Patterson: May I see it, please?

Mr. Young: To save time we'll let you have a copy.

Mr. Patterson: I'd rather look at the original.

The Court: Well, to save time while you're looking at it the witness may look at it—the copy that counsel has.

(Mr. Lewis hands document to the witness.)

Mr. Lewis: Have you read the entire statement?

A. Yes, sir.

Q. Did you understand it? [84]

A. Beg your pardon?

(Testimony of Richard Kazuo Mikami.)

Q. You understood what was written here?

A. Yes, sir.

Q. Do you recall—after reading this statement do you recall those questions and answers being asked you? A. Some of them, sir.

Q. Did you make the answers that are recorded here?

Mr. Patterson: The same objection; and the further objection, if Your Honor pleases, upon the ground that this is leading and suggestive and incompetent at this time for any purpose whatsoever with reference to his statement.

The Court: The statute requires the laying of such a foundation, if counsel desires to impeach the former inconsistencies—or the statements of the witness on the stand on alleged former inconsistent statements.

Mr. Patterson: Save an exception.

The Court: The objection is therefore overruled.

Mr. Lewis: May we have the question and answer, Mr. Reporter?

Reporter: There was no answer to the last question.

The Court: Read the question so the witness may answer it.

(Reporter reads last question.)

Mr. Lewis: "Yes" or "No."

A. You mean every one of them, sir?

Q. Yes. A. That I don't remember.

Q. Will you examine this statement again and tell us which ones you don't remember making?

(Testimony of Richard Kazuo Mikami.)

Mr. Patterson: Same objection, if Your Honor pleases.

The Court: Same ruling.

Mr. Patterson: I wish to interpose the objection that [85] counsel cannot hand to the witness—in addition to the other objections—documents composed of several pages and ask him a question of this kind; it's unfair to the witness and unfair to the defendant.

The Court: Objection overruled.

Mr. Patterson: Save an exception.

The Court: The Court will ask the witness, in view of the objection, however, Mr. Patterson: Mr. Witness, will you look at the questions and answers on the first page of the document and state whether or not there are any of those questions and answers which you want to dispute?

A. "Have you ever operated a gambling game at your home?" I don't want to make an answer now, sir.

The Court: Well, the question is whether that question was asked you there and the answer given that is there.

A. Yes, sir.

The Court: That's the only question that counsel is asking you, not what your statement is today but whether those questions and answers were put to you then and the answers given then. Do you understand?

A. Well, if I answer some of these questions "Yes" or "No" I might incriminate myself.

(Testimony of Richard Kazuo Mikami.)

The Court: Well, that isn't the point here. The only question put to you here, Kazuo; on reading the questions and answers on the first page, do you want to dispute the fact as to whether those questions and answers were given at that time in the County Attorney's office, or is that first page substantially correct as to questions and answers; what is your answer to that?

Mr. Patterson: Well, I think this man—Your Honor, I suggest that this man be advised as to his Constitutional rights; he might be involved in a perjury case. [86]

A. That's what I want to find out.

The Court: Well, he will be involved in a perjury, Mr. Patterson, if a foundation is laid when any witness would be under oath; but he has no Constitutional right here on the point of this question, as to whether or not he disputes any questions or answers that are presented to him that are recorded on that first page; if he does, he has a right to say so. The Court is not "short-changing" him on his right to dispute those questions and answers as if they were given at that time; that's the only point.

Mr. Patterson: We take an exception to the Court's position, if Your Honor pleases, most respectfully.

The Court: Your respectful exception is noted. Do you understand the question about that first page now, Kazuo?

A. Yes, sir.

The Court: The only question is whether or not

(Testimony of Richard Kazuo Mikami.)

that series of questions and answers was taken down at the Prosecutor's office, or whether they were not asked you then.

A. I don't remember every question, sir.

The Court: Well, what question do you not remember? That's what Mr. Lewis wants you to point out; on the first page, now.

A. "Have you ever operated a gambling game at your home?"

The Court: You don't remember that question being asked you at that time, is that it?

A. No; whether I said "Yes" or "No" I don't remember.

The Court: You don't remember whether you said "Yes" or "No"; but was the question asked you at that time?

A. Yes, I think so.

The Court: The question was asked, but you don't remember what answer you gave, is that what you're saying?

A. Yes, sir. [87]

The Court: Now, is there any other question on that page, or answer, that you have anything to say about or question about?

A. No, sir.

The Court: All right. Look at the second page; and the same thing.

Mr. Lewis: If the Court pleases, I think for the purposes of the record we might have it admitted for identification.

The Court: Marked for identification—what's the next number?

(Testimony of Richard Kazuo Mikami.)

Clerk: 14.

The Court: Prosecution's 14 (E) for Identification.

Mr. Lewis: And can each page be marked 14-1, 2, 3, 4?

The Court: Are they marked 1, 2, 3, 4?

Mr. Lewis: Yes.

The Court: On the second page of this document are there any questions and answers there, Kazuo, you want to raise any point about your memory or whether that occurred at the time?

A. "Who assisted in operating and running this game?"

The Court: Beg pardon?

A. "Who assisted in operating and running this game?"

The Court: Well, was the question asked you at that time?

A. I don't remember.

The Court: And you don't remember whether you answered such a question, is that what you're trying to say?

A. Yes, sir.

The Court: Any other?

A. "Did you have any partners?"

The Court: Do you remember whether or not such a question was asked you at that time? [88]

A. I don't remember.

The Court: You don't remember whether you answered such a question?

A. No.

The Court: Is that what you're saying?

(Testimony of Richard Kazuo Mikami.)

A. Yes sir.

The Court: All right; any other question and answer?

A. Do I have to tell every question and answer that I don't understand?

The Court: If there's any question or answer on that page that you have any doubt about, memory, whether it was asked you over there or whether you answered it over there, you are at liberty to so state.

A. "Were there any partners—"

Mr. Patterson (Interrupting): I understand my objection runs to the Court's questions the same as the point made.

The Court: That's understandable, Mr. Patterson, and is included in the ruling. I'm simply trying to get an idea of whether this witness understands questions; I'm not trying to become attorney in the case.

A. "Were there any partners associated with you in the gambling game?" "In what way?"

The Court: You don't remember such a question and answer?

A. Will you make it numbered so I can tell you easier? A lot of these things I don't remember.

The Court: Well now, Mr. Lewis, it's sufficiently clear to the Court what the progress with the witness will be. Now I ask you to confine your questions to the pages of the document that are concerned with the alleged inconsistent statements.

Mr. Lewis: Very well, sir. [89]

Q. Kazuo, will you examine page 2 of the Prose-

(Testimony of Richard Kazuo Mikami.)

cution's Exhibit 14 (E) for Identification, this statement; how many of these—which of these questions do you not recall and which ones do you recall?

Mr. Patterson: The caution is too general, if Your Honor pleases.

The Court: Read the question—excuse me, counsel; I was giving instructions to the Clerk at the time. This exhibit, by the way, ought to have a letter rather than a number for the Prosecution.

A. "Who assisted in operating and running this game?" "Myself."

Mr. Lewis: You don't remember that question or that answer?

A. I don't remember whether I answered that, sir.

Q. What other question or answer do you not recall, on that page?

A. "Did you have any partner?" "No."

Q. You don't recall that question and answer?

A. Yes, sir.

Q. What else?

A. "Whom did you have employed or in any way helping you in operating your game?"

Q. You don't recall that question?

A. I don't recall that question.

Q. Do you recall the answer?

A. I don't recall the answer.

Q. What else?

A. "Did you have any watchman?"

Q. Did you have any what?

(Testimony of Richard Kazuo Mikami.)

A. Watchman.

Q. You don't recall that question? [90]

A. No, sir.

Q. Or the answer? A. No sir.

Q. What else?

A. "Who are they?" "I can't tell you because some of them came in every day and others don't." "How many watchmen did you have?" "Three or four." "I told him that I was having a crap game."

Q. You don't recall that answer?

A. I don't know whether I said that or not.

Q. You don't know whether you said it or not?

A. No, sir. "Was there anybody present besides you and Caminos when you gave him this money?" "Not that I know of."

Q. You don't recall that question and answer?

Mr. Patterson: What was that answer, please?

Mr. Lewis: "Was there anyone present when you gave Caminos this money?" Answer: "Not that I know of."

The Court: What's the question now to the witness?

Mr. Lewis: The question to the witness was: Do you recall that? He said: "I don't recall it."

The Court: I want to correct the record, Mr. Reporter; this exhibit should be referred to as "Prosecution's Exhibit E for Identification instead of number "14."

Mr. Lewis: And let the record show that he was reading from page 2 of Prosecution's Exhibit E.

(Testimony of Richard Kazuo Mikami.)

Q. Kazuo, I now show you page 3 of Prosecution's Exhibit E for Identification, being page 3 of this same statement; will you examine the questions and answers on that page and tell us which ones you do not remember?

A. Your Honor, I don't know whether I can remember all these or not, because I was all excited up there.

The Court: Well, the point that you are asked now is [91] whether or not you dispute any of the questions or answers on that page as having been asked you and answered at that time in the Prosecutor's office.

A. "How did you come to give him this \$200.00?" "Well, I figured he was on the Vice Squad, so I gave him, he might overlook my place."

The Court: And what is your present statement about whether such a question or answer was asked over there?

A. I don't remember.

Mr. Patterson: Which page is he on now?

The Court: 3.

Mr. Lewis: 3. Kazuo, do you remember the question that you've just read?

A. I remember the question, sir, but I don't know what I said. "Because he might overlook my place."

Q. You remember the question but you don't recall the answer?

A. I kind of recall something like that.

Q. You say it was "something like that"?

(Testimony of Richard Kazuo Mikami.)

A. Yes, the question was something like "How did you come to give him this \$200.00?"

Q. You remember that question or a similar question? A. Yes, similar question.

Q. How about the answer?

A. I don't remember whether I said "he might overlook my place."

Q. Well, do you remember saying anything similar to that?

A. Similar to "overlook my place"?

Q. Yes. A. I don't remember.

Q. You don't remember that?

A. "What did you tell him before you gave him this money?" [92] "I am having a crap game sometimes."

Q. Do you remember the question?

A. I don't remember, sir.

Q. What? A. I don't remember it.

Q. You don't remember the question?

A. No, sir.

Q. And you don't remember that answer?

A. No, sir. "Was it in an envelope, or how?" "It was open."

Q. You don't remember the question "It was in an envelope, or how?" A. Yes sir.

Q. And your answer? A. "It was open."

Q. "It was open," you don't remember that?

A. No sir. "How long did he remain after you gave him the money?" "Another couple of minutes, then he went home."

Q. Do you remember the question?

(Testimony of Richard Kazuo Mikami.)

A. I don't remember that, sir.

Q. Do you remember the answer?

A. I don't know whether I said that or not.

That's all.

Q. Those are the only questions and answers that you don't remember? A. Yes, sir.

Q. The other questions and answers on page 3 of Exhibit E you do remember? A. Yes, sir.

Q. Referring to page 6, do you recall the question: "How many times have you given Captain Caminos money?" And the answer: "Once." [93]

A. I don't know whether I said "once"; I don't remember that.

Q. You don't remember that. As a matter of fact, how many times did you give Captain Caminos money?

A. Only that once when I paid him for the house.

The Court: Will you hand that to be marked now by the Clerk as an identification only, the document.

Mr. Lewis: I think the record should show that that last question that I asked him about "How many times have you given Captain Caminos money?" appears on page 6 of this document.

The Court: That's the page that you were examining him on.

Mr. Lee: May I have that answer in response to that last question?

The Court: "Once."

Mr. Lee: He said "Once"?

The Court: "Once."

(Testimony of Richard Kazuo Mikami.)

Mr. Lee: Then he said something else I didn't get.

The Court: Mr. Reporter, will you read the last question and answer?

(Reporter reads second to last question and answer.)

The Court: And the next question?

(Reporter reads last question and answer.)

Mr. Lewis: Kazuo, are you afraid of incriminating yourself today?

Mr. Patterson: I submit that—objected to upon all the grounds previously stated, upon the further ground that it's argumentative, improper, unfair, prejudicial.

The Court: The witness made some such observation in his answer, Mr. Patterson, and counsel has a right to clarify whether that is the position.

Mr. Patterson: We save an exception. [94]

Mr. Lewis: May we have the question repeated, if the Court please?

(Reporter reads last question.)

A. Yes, sir.

Q. Kazuo, would your answers be any different if you were not afraid of incriminating yourself?

Mr. Patterson: Objected to upon the ground that it's improper, it's prejudicial, irrelevant, incompetent; upon all the grounds previously stated, if Your Honor pleases.

The Court: Objection sustained.

Mr. Lewis: No further questions.

(Testimony of Richard Kazuo Mikami.)

Cross-Examination

By Fred Patterson, Esq.:

Q. And, Mr. Kazuo, you were shown a document containing some questions and answers a while ago by Mr. Lewis which you read from and which is marked for identification Prosecution's Exhibit E; and you I think stated that that was taken in the early part of the year 1946, in April, is that correct?

A. Yes, sir.

Q. And did you ever sign that document?

A. I don't remember signing it, sir.

Q. Did you sign it? I'll show it to you.

A. I didn't sign it.

Q. You didn't sign it.

Mr. Patterson: No further questions.

The Court: Any further questions, Mr. Lewis?

Mr. Lewis: No further questions.

The Court: Take a short recess, gentlemen.

(Recess—11:08 to 11:17 a.m.) [95]

(At conclusion of this last recess the Reporter was not called; when he arrived in the courtroom the Court was on the Bench, the jury present, with counsel and the defendant, and Mr. Peter A. Lee was concluding some motion.)

The Court: Are you through with the grounds of the motion?

Mr. Lee: Yes, sir.

The Court: Motion is denied.

* * *

6. The testimony of Territory's witness, Jose Tantog; beginning with the line on page 818 of said transcript which reads: "Jose Tantalog" and ending with the line on page 825 of said transcript which reads: "Mr. Lewis: No further questions."

JOSE TANTOG

being first duly sworn as a witness on rebuttal in behalf of the prosecution, testified as follows:

Direct Examination

By Dudley C. Lewis, Esq.:

Q. Will you state your name?

A. What's that, sir?

Q. What's your name?

A. My name, Jose Tantog.

Q. Where do you live, Jose?

A. I'm living down Waialua.

Q. By twin bridges?

A. Behind fire station.

Q. How long have you lived there?

A. Since 1939.

Q. And do you know the defendant Mr. Caminos?

A. Not all of them, only him I know. [96]

Q. Only him you know; you know Clarence Caminos?

A. No, only him; only Caminos I know, but the first name I don't know.

Q. Do you see him in the courtroom?

(Testimony of Jose Tantog.)

A. Yes, that's the one there (indicating).

Mr. Lewis: Let the record show that the witness has indicated the defendant.

Q. How long have you know him, Tantog?

A. Since I have been caught when I running a game without any permission.

Mr. Patterson: I ask that that answer be stricken upon the ground it's not responsive.

The Court: Motion to strike will be denied.

Mr. Patterson: Save an exception.

Mr. Lewis: May we have the answer read?

Mr. Patterson: May we further object to it, Your Honor, upon the ground it is irrelevant, immaterial and incompetent, not within the issues of this case, not rebuttal testimony, does not—is not proper evidence with reference to impeachment if that is why it is being put out at this time, and upon the ground that related incidents of other crimes of similar nature not properly in evidence in this case in any event, and especially not such upon rebuttal, and upon the ground that they cannot at this time show any statements contrary to the impeaching questions which were asked by the defendant Caminos when he was a witness in this case, and that they are not and should not be permitted to ask any such questions and they are bound by the statements of Clarence Caminos which were asked on cross-examination which sought to impeach him, in the same way that any other witness is bound. May the answer be stricken; the question in this case, if Your Honor pleases, did not call for any answer

(Testimony of Jose Tantog.)

such as was given by the witness; Mr. Lewis asked him how long he had known him, then he made some answer [97] which I didn't understand, but it was not along that line.

The Court: The Court will consider your objection as being interposed before the answer. Have you any observations in regard to your position on that, Mr. Lewis, to the objection made?

Mr. Lewis: To Mr. Lewis?

The Court: Yes. You heard the objection made by counsel?

Mr. Lewis: I did.

The Court: Have you any answer?

Mr. Lewis: I have.

The Court: All right.

Mr. Lewis: If the Court please, this witness is Jose Tantog, about whom two relations with the defendant were brought out on cross-examination. I agree with counsel as to the general rule of law that irrelevant matters brought out on cross-examination cannot be made the basis for impeachment. However, where the matters are relevant and go to the issues in the case they can be; this goes to show the intent, the scheme, the general plan, the relationship of this defendant to this type of offense; and I'd like to refer the Court to—

Mr. Patterson: We'd prefer any argument in the absence of the jury as a matter of law, Your Honor; I make that request.

The Court: Will you open to the book and pass

(Testimony of Jose Tantog.)

the book up to me so that I can read it in the absence of the hearing of the jury?

Mr. Lewis: I will.

Mr. Patterson: May we have opportunity to read it?

The Court: Yes, after I have read it I'll pass it to you, Mr. Patterson. [98]

Mr. Patterson: I would like to submit authorities too, Your Honor.

Mr. Lewis: I'd like to call attention of the Court to the general statement of 70 C. J., pages 1160, 1164, and particularly as to what constitutes collateral matter which is noted on page 1165. (Handing volume to the Court.)

The Court: Let the record show that volume 70, Corpus Juris, is before the Court.

The Court (After reading in silence): One or two matters in those that you referred to me that I'd like to look up in the recess. We'll take our adjournment at this time until 2:00 o'clock this afternoon.

(Recess—11:55 a.m. to 2:12 p.m.)

The Court: Let the record show that the jury, counsel, defendant, and the witness are present. Mr. Reporter, what was the matter pending when we adjourned?

(Reporter reads last remarks of the Court prior to the foregoing recess.)

The Court: I think we were just presented with

(Testimony of Jose Tantog.)

objection to a question; what was the question, Mr. Reporter, to which there was objection?

(Reporter reads last question and answer.)

The Court: The objection made is denied.

Mr. Patterson: Save an exception, if Your Honor pleases.

The Court: Exception is allowed.

Mr. Lewis: Tantog, what year you first meet Caminos?

A. It was 1944, I think, November or December, I'm not sure on that.

The Court: Tantog, you work hard talk, talk these men so they can hear you, eh?

A. Yes, sir. [99]

Mr. Lewis: Tantalog, talk loud so all people of the jury can hear you, eh? A. Yes, sir.

Q. Tantog, where you first meet Caminos?

A. That night that I was caught, in my house.

Q. You met him in your house?

A. Yes, in my house.

Q. What was going on at that time?

A. While I was running the game.

Q. What kind of game?

A. Dice game—7-11.

Q. People play money in that game?

A. Yes.

Mr. Patterson: May my objection run to all this line of the testimony the same as the other witness.

The Court: Yes, Mr. Patterson, and your exception also.

(Testimony of Jose Tantog.)

Mr. Lewis: How long were you running that game, Tantog?

A. When I caught it's about one week.

Q. About one week?

A. About one week, I think.

Q. Did you run the game again?

A. No, since that time I quit; that time I gave up, I quit 'till now, no play no more, I no run no more.

Q. Before that you met Caminos? A. No.

Q. You never seen him before?

A. No; I have seen him, but I don't know him yet that time.

Q. Tantog, you ever give any money Caminos?

A. Yes.

Q. How much?

A. I don't know how much altogether, that's only one time. [100]

Q. How much you give?

A. First I remember 20 dollar bill I give him about one o'clock in the night when he came with one policeman.

Q. That policeman's name Moses Piahia—Moki?

A. I don't know—yes, Moki was with him too.

Q. Moki was with him too?

A. Yes, the one who call me down to quit; Caminos down in the car.

The Court: What time is he talking about?

Mr. Lewis: When was that time?

A. You mean the date?

Q. Yes.

(Testimony of Jose Tantog.)

A. I don't know the date, I forget.

Q. Do you remember the year?

A. The year is 1944.

Q. 1944? A. 1944, I think.

Q. What you give him the money for?

Mr. Patterson: Object to upon—

A. (Interrupting): Well, I was there to run the first time?

Mr. Lewis: You were there to run what?

A. Run game.

Q. Run game? A. Run game, yes.

Q. Who told you to run game?

A. Caminos.

Q. Caminos?

A. Yes. After I got caught I paid bill \$130.00 the first night we got caught over there; next time he came with two policeman, three with him—Dupont, Moki, and him.

Q. Who was the first one—Dupont? [101]

A. Dupont, Moki and Caminos.

Q. And what happened?

A. Well, he tell me the story he was so sorry they been raid us that night—"Look Catalino; in order to catch up that money you better run the game;"—

Q. (Interrupting): He said "Look Catalino"?

A. Yes; he told me "You look Catalino, he's running game, he pay fine but he catch up the money."

Q. Mr. Tantog, you ever have one boat?

A. Yes, I get.

(Testimony of Jose Tantog.)

Q. How big that boat?

A. It was 12 feet, I think.

Q. One racing boat? A. Racing boat, yes.

Q. What happen that boat?

A. Well, that was happen that I give to Caminos.

Q. How you give Caminos?

A. He was asking me the boat. After three days I think he let me play like that I was a little bit—feel little bit better because he let me run the game and I think I can make money, and after two or three days he ask me the boat, he like buy, I say that no fair. Then after that he come back see again, tell me story about the boat, he like the boat, and after that as I was still going yet I give him the boat.

Q. You give him the boat? A. Yes.

Q. What he give you?

A. No nothing, just the chance to run, that's all, that's what I figure.

Q. He never give you any money for the boat?

A. No. [102]

Q. He no give you \$10.00? A. No.

Q. Never 5 cents? No one cent.

Q. Not one cent? A. Not one cent.

Q. What time you give him the boat, what year?

A. I don't know, I forget already, even the day I don't know what date was that, what month was that.

Q. What year you think?

A. About the end of the year, the earliest part of 1945, that's what—because not long after that.

(Testimony of Jose Tantog.)

Q. You say late 1944 or first part 1945?

A. Yes.

Q. Is that right? A. Maybe 'round there.

Mr. Lewis: No further questions.

* * *

CATALINO PRIOPIOS

7. The testimony of Territory's witness, Catalino Priopios, beginning with the line on page 839 of said transcript which reads: "Q. What you do for living then, 1945?" and ending with the line on page 843 of said transcript which reads: "Mr. Young: No further questions."

Q. What you do for living then, 1945?

A. Gamble.

Q. You gamble, eh? A. Yes, sir. [103]

Q. You make money gambling?

A. I make money little bit.

Mr. Patterson: That's objected to upon the ground it's irrelevant, immaterial and incompetent.

The Court: Objection overruled.

Mr. Young: What kind of gambling games?

A. 1945, that chicken fight.

Q. Chicken fight? A. Yes, sir.

Q. And where you hold that chicken fight, what place?

A. The last time 1945, the last time, Ondo pineapple, the last time.

Q. You know Caminos? A. I know.

Q. Is he in the court today? A. Yes, sir.

Q. Where is he?

(Testimony of Catalino Priopios.)

(Witness indicates.)

Mr. Young: May the record show—

Mr. Patterson (Interrupting): Ask him to have the man stand up; I don't know who he's pointing to.

The Court: Which man?

A. That man (indicating).

Mr. Young: With the shirt, or the coat?

A. Coat.

The Court: Are you satisfied, Mr. Patterson?

Mr. Patterson: Yes, Your Honor, I'm satisfied; he was pointing at me before.

Mr. Young: When did you first become acquainted with Caminos? (question interpreted to the witness). A. 1932. [104]

Q. Did you see him in 1945? A. Yes, sir.

Q. When you were running a gambling game did you see him? A. Yes, sir.

Q. Now, did you ever have any talk with Caminos about gambling games and cockfights?

Mr. Patterson: We understand, if Your Honor pleases, that our objection runs to all this line of evidence and we have the same exception as to the previous witnesses; do I understand that?

The Court: Yes, your objection may go to this in the Court's ruling that the evidence is admissible upon the theory—to illustrate the theory of the prosecution that there was a general scheme of corrupting officers as police officers, and for that purpose alone.

(Testimony of Catalino Priopios.)

Mr. Patterson: And may we have the further objection, if Your Honor pleases—I don't know whether it's distinctly in there or not—that any evidence of this kind, if admissible at all, would be offered—should have been made by the prosecution in its case-in-chief, not as rebuttal testimony; it rebuts nothing.

The Court: The fact that it's appearing in rebuttal, the objection to that the Court will overrule.

Mr. Patterson: Exception, Your Honor.

(The last question is interpreted to the witness.)

A. First time Mr. Caminos send one policeman, it's Moki, and Moki told me—

Mr. Patterson: I object to what Moki told him.

The Court: Objection sustained. Never mind what Moki said; it's Caminos.

Mr. Young: You ever talk to Caminos—not Moki, to Caminos? [105]

A. Yes, but the game stopped.

Q. The first time you talked to Moki?

A. Moki he come my house, I tell him—

Mr. Patterson: Objected to if Your Honor pleases, upon the ground it's irrelevant, immaterial and incompetent.

The Court: What Moki told you, no good, pau. What Caminos tell you, that's the question.

A. He told me "you run the game, you no scared."

Mr. Young: Who told you?

A. Mr. Caminos.

(Testimony of Catalino Priopios.)

Mr. Patterson: What was the answer, please?

(Reporter reads the foregoing answer: "He told me 'You run the game, you no scared.' ")

A. And he charge me for \$25.00 a week.

Q. (By Mr. Young): Who charge you \$25.00?

A. Mr. Caminos.

Q. Did you pay him \$25.00? A. Yes, sir.

Q. How many weeks?

A. Every week \$25.00, and I run for my own game almost one year; Christmas time double, Christmas and Sunday, well, I pay double—25-25.

Q. You give to him personally?

A. I give him.

Q. Personally? A. Yes, I give him.

Q. Every week?

A. Every week he come, Sunday night some time—

The Court (Interrupting): What year?

A. Start game 1943.

Q. (By Mr. Young): And you paid for one year after that, is [106] that right?

A. About one year.

Mr. Young: No further questions.

* * *

EXCHANGES BETWEEN COURT AND COUNSEL

8. The exchanges between Court and counsel appearing on the following pages of said transcript and there indicated by being inclosed in brackets, to wit:

pp. 73, 102 and 103, 115, 140, 245 and 246, 337 to 339 (inclusive), 362 and 363, 528 and 529, 813 and 814, 830:

(from page 73)

The Court: That's not the testimony of the witness, and it's a deliberate misconstruction of his testimony. He said sometimes three men.

* * *

(from line 2, page 102, to line 30, page 103.)

The Court: I suggest, Mr. Patterson, you do not interrupt the witness and make objection when his answer is unfinished; you're taking advantage of the witness, you're taking advantage of counsel, you're taking advantage of the Court; there's an orderly way to present an objection.

Mr. Patterson: Most respectfully, Your Honor—when this man says "he gave me the impression" I can't figure that out ahead of time—I most respectfully except to the remarks of the Court and assign them as error, if Your Honor pleases.

The Court: Your objection is noted and the exception allowed. The Court requests you, in a very courteous tone of voice, Mr. Patterson, to please wait until the man has finished his answer; you'll be given an adequate hearing with your objections and the Court will make its ruling.

Mr. Patterson: I do say, if Your Honor pleases, that the remarks made to me a while ago are preju-

dicial, and I assign them as error; I most respectfully do that.

The Court: Mr. Reporter, will you read to where we got before Mr. Patterson interrupted. [107]

(Reporter reads last answer.)

A. (Continuing): The impression he gave me was sort of that at the back of those doors there was something, maybe paraphernalia; I said "Yes" to his question about the doors leading outside so he won't ask me to open the doors; and that stopped there.

Q. Mr. Au—

Mr. Patterson (Interrupting): Just a minute. I respectfully submit to the Court the point I made was that this man was going to say in front of this jury what his impressions were; I assign that—I ask that that be stricken and the jury instructed to disregard it, it's his secret impression, it is not evidence, and that was the time I got up before counsel so that that would not go to the ears of this jury; I don't think it has any place there, and I respectfully and courteously request this Court to strike; that's exactly what I wanted to object to, and I make the point that the only way. Your Honor, I could stop that was to interrupt this witness when he began to talk about something which wasn't in answer to Mr. Lewis' question. To my mind it's a very serious situation; I'm sorry I'm party to it, but in fairness to my client I have to take exception to it, and I ask that that be done at this time.

The Court: Mr. Reporter, will you read slowly

to me the words just after the witness' "impression."

(Reporter reads portion requested, of witness' last answer.)

The Court: The motion to strike will be denied.

Mr. Patterson: To which we note an exception, if Your Honor pleases.

The Court: Exception allowed. And, gentlemen of the jury, in view of the past few moments that you've observed, recall to your mind your answers to the questions of counsel [108] on your voir dire, that arguments and matters arising between Court and counsel in this trial should not be in any respect used by you for or against the defendant or the Territory as parties to the case; but the Court is simply trying between itself and counsel, on his part to preserve his record in the court, to preserve an orderly trial, so that you'll lay it to the Court and counsel and not to their client.

* * *

(from lines 23 to 25, page 115.)

The Court: The remark may be stricken; and, gentlemen of the jury, you may disregard the instructions to the Court given by Mr. Patterson.

* * *

(from lines 7 to 20, page 140.)

(Pause.)

The Court: The Court will ask counsel to proceed with the examination.

Mr. Patterson: Well, I was checking something, if Your Honor pleases.

The Court: Yes, but, Mr. Patterson, it's every other question checking, but please get busy and get through with the checking.

Mr. Patterson: I take exception to the rebuke; it isn't every other question; it's the second time this morning, and I wish the record will so show.

The Court: The record should show the truth; it's more than the second time, Mr. Patterson.

Mr. Patterson: As I remember it's the second time. [109]

(from line 29, page 245, to line 5, page 246.)

The Court: The Court would not only refuse to re-open but also refuse the line of examination as not within the scope of any proper cross-examination of this witness in going into an entirely foreign incident as to which there would be no opportunity in this case to go into the details; simply a diversion of the attention of the jury on the issues before them, not having any direct bearing upon the credibility of this witness.

* * *

(from line 19, page 337, to line 8, page 339.)

The Court: (Interrupting): The Court will cut out the argument now in that fashion, Mr. Patterson. The sole question is one of law and not one of an argument to the Court on the credibility of witnesses; the question is one of law, whether you can manufacture opportunity for evidence by specify-

ing names in a cross-examination on a collateral issue, that's the question of law involved. The Court will permit the one type of question from this witness and will lay the precedent if you have others of the same character, to simply ask the witness whether or not he received any division of the spoils from Mr. Clark on any occasion.

Mr. Patterson: Thank you, Your Honor. Will you read that statement of His Honor's to me——

* * *

The Court: Yes; let me give it through, Mr. Patterson. I'll caution the jury that the Court is permitting this testimony; we're not trying the issues of other collateral matters, whether they did or did not happen; we're trying simply the issue as to Mr. Caminos, and this issue is as to the credibility of Mr. Clark as addressed in this particular case. [110]

Mr. Patterson: Can I get the first part of Your Honor's statement?

The Court: Yes.

Mr. Patterson: I wish to take exception and assign as error the remarks of the Court that I took advantage of an opportunity to manufacture evidence, as being prejudicial to the defendant in this case; I have not done that; I didn't even examine the witness Clark, Your Honor, I didn't even examine him so I couldn't be guilty of manufacturing evidence.

The Court: Mr. Patterson, you are a member of the group of attorneys defending this case. The

Court's remark was that the proposition of law before the Court was whether the defense could manufacture opportunity for additional witnesses on collateral matters by specifying on cross-examination names, and that it was a question of law for the Court, and I am resolving that question of law that in connection with the transactions alleged to have emanated from Paul Au of the delivery of money to Mr. Clark that I am permitting you to ask this witness or any other witness that was named in that history whether or not he received any split of the spoils alleged to have been given.

Mr. Patterson: In connection with that, Your Honor, since Your Honor's comment I asked that it be read, I wasn't sure just exactly what was said before, but as to that I now withdraw that request. I most respectfully, if Your Honor pleases, assign as error and prejudicial to this defendant the statement of the Court to the defense, to the other attorneys besides myself, on the attempt to manufacture a suit and present evidence.

The Court: Exception may be noted. And again, gentlemen of the jury, the controversy between Court and counsel is not evidence in the case. [111]

* * *

(from line 22, page 362, to line 4, page 363.)

Mr. Patterson: Will counsel admit that it is?

Mr. Young: If the witness isn't sure himself, how can I admit it?

Mr. Patterson: You brought the pictures to court.

Mr. Young: You're asking the witness' opinion, not mine.

Mr. Patterson: I'm asking you for a simple concession.

The Court: Proceed with the examination of the witness, Mr. Patterson. The Court cautions you again not to enter into controversies with counsel as side remarks.

Mr. Patterson: I apologize to the Court; I was wrong on that occasion. And I understand, then, that counsel refuses to admit that this is the wall 'round Honolulu Rooms?

The Court: There's no occasion to call for an admission; you're examining the witness.

* * *

(from line 1 to 11, page 528.)

The Court: The record of Mr. Clark in the Police Department isn't primarily admissible evidence; it would have been available on cross-examination of Mr. Clark in connection with that, Mr. Patterson, but you can't impeach and discredit the witness by a hearsay record on the files of his employment office.

Mr. Patterson: I can show he was sick and in bed, though, when he was supposed to be giving bribes.

The Court: Well, you were given opportunity in your examination of the witness for the purpose of producing impeaching evidence of that [112] character.

(from line 12, page 528, to line 5, page 529.)

Mr. Patterson: I didn't know it at the time, if your Honor pleases, I wasn't so informed.

The Court: Well, the possibility of investigating it was known and you knew for months he was going to be a witness.

Mr. Patterson: I didn't know it at the time, and I've ascertained it since, as lawyers do learn things in the course of a trial.

The Court: Well, the Court can't delay the trial for the lack of diligence of counsel.

Mr. Patterson: I take exception and assign the ruling of the Court as error and prejudicial.

The Court: We expected errors; exception is noted. Have you got through with your offer, your request?

Mr. Patterson: Yes.

The Court: The Court will not make any ruling ordering the production.

(Open Court.)

Mr. Patterson: Then, as I understand it, the Chief of Police is not required to bring this record here in obedience to the subpoena as to which there is some misunderstanding about?

The Court: That's correct; the Court will not order the production of the document under the ruling made.

Mr. Patterson: Save an exception.

The Court: Exception has been made and [113] noted.

(Excerpts from pages 813 and 814.)

Mr. Patterson: We object to this upon the ground; upon all the objections stated; upon the ground that they are really to collateral matter on rebuttal testimony, not even brought out by us; in other words, since—we respectfully submit, if your Honor pleases, since we've closed our case they're trying an issue upon their own witness; they put a witness on the stand to testify and now they're trying the issue whether or not that man was telling the truth; this defendant is not bound by any testimony which was taken out of his hearing or out of his presence; not impeachment.

The Court: Mr. Patterson, the Court dislikes the necessity to call your attention to the obvious thing that you know, that any party putting on a witness who is obviously surprised by the answers given on the witness stand by reason of the fact that such party is bound by that witness' statements unless they desire to impeach him from former inconsistent statements, the law allows a party who is thus surprised to impeach his own witness under specific rules of the statute, to it, calling the witness' attention to the time and place of the supposed inconsistent statement, giving him an opportunity to be heard thereon, and if the witness does not clearly admit the giving of the former statement, that the party has the right to prove, if he can, from any witness, the giving of the former inconsistent statement, a rule which you've been, as an attorney for more than 30 years, conversant with and it applicability here; and the Court is giving this instruction

openly in the presence of the jury by reason of the type of argument that you've just made openly, as though it were something being tried by the prosecution that's out of order; and the Court wants the record to show, and if the Court is in error to give you the benefit of that error, to correct the statement in [114] the presence of the jury, that the law is that a party may by proper showing impeach his own witness, if having produced him under the responsibility of vouching for his truth they are taken by surprise and desire to show to the jury that they are not satisfied with the present truth of the witness' answers given. Now you may have your exception to the Court's pronouncement of law in the presence of the jury on that issue.

Mr. Patterson: And may I have an exception to the Court's statement that that is my knowledge, that I know that; and I most humbly and respectfully say to the Court that I do believe the rule is otherwise; and I assign that remark of the Court as error.

(Excerpt from page 830.)

The Court: You've heard the objection, Mr. Patterson; the Court suggests that you give the witness a chance to answer one question at a time.

In the Supreme Court of the Territory of Hawaii,
October Term, 1949

Wednesday, June 14, 1950
Argument, 10:00 A.M.

Nos. 2680 and 2681, Consolidated

TERRITORY OF HAWAII,

Plaintiff-Defendant in Error,

vs.

CLARENCE C. CAMINOS,

Defendant-Plaintiff in Error.

(Cr. Nos. 19015 and 19018. Error to circuit court,
first circuit, Hon. A. M. Cristy, Judge.)

The Court: Hon. Samuel B. Kemp, Chief Justice;
Hon. Louis Le Baron and Hon. Edward A. Towse, Associate Justices.
Mrs. Leoti V. Krone, Clerk.

Counsel: Fred Patterson, Esq., Peter A. Lee, Esq.,
and Oliver P. Soares, Esq., for Clarence
C. Caminos, plaintiff in error.
Allen R. Hawkins, Esq., Assistant Public
Prosecutor, for the Territory of Hawaii.

Court convened at ten o'clock a.m.

Chief Justice Kemp called the case for argument,
and counsel announced that they were ready.

Three counsel were present for defendant-plaintiff in error, Messrs. Fred Patterson, Peter A. Lee

and Oliver P. Soares, the chief justice giving them permission to each present an argument, although stating that ordinarily two only were permitted to argue for one side.

At 10:05 Mr. Peter A. Lee opened the argument for defendant, presenting the points of hearsay evidence, specific crimes being permitted in evidence against the defendant, and variance. During the course of his argument he cited the case of *Harris v. Tate*, 204 P. (2d) 305, 308, which is not in his brief. He concluded his argument at 10:55 a.m.

Mr. O. P. Soares followed immediately, his portion of the argument involving the refusing of requested instructions by the defendant and the giving of certain instructions requested by the plaintiff, he stating that he would confine his argument to points 12, 13 & 14 to the refusal of the court to give certain instructions requested by the defendant, points 12 to 16, inclusive, and to points 15 [116] and 16 to the giving by the court over objection of defendant of certain instructions. His argument was concluded at 11:15 a.m.

Mr. Fred Patterson stated he will make the reply argument to Mr. Hawkins.

Thereupon, at 11:15 a.m., Mr. Allen R. Hawkins, Assistant Public Prosecutor, for the Territory, started his reply to the arguments presented by defendant's counsel, during which he referred to pages 90-93 and 93-98 of the record on appeal, reading from portions of it, and replying to each point counsel for defendant had argued upon, taking them categorically. He cited the cases of Commonwealth

v. Kearney, 308 Mass. 481, 33 N. E. (2d) 303 (1941), and State v. Tighe, 289 S. W. 829 (Mo. 1926), not in his brief, concluding his argument at 11:50 a.m.

Mr. Fred Patterson immediately followed Mr. Hawkins in reply, concluding his remarks with the submission and hope that the court will find that the defendant has been injured, that he should be given a new trial, and that he should go free, as his counsel believe he should, finishing at 12:04 p.m.

Mr. Soares then replied very briefly to Mr. Hawkins re no fabricated testimony, which he stated is a fact submitted by both sides, concluding at 12:05 p.m.

Chief Justice Kemp then stated that since this concludes the argument, the matter will be taken under consideration, and the court will now adjourn until tomorrow at 10:00 a.m.

Court thereupon adjourned at 12:06 p.m.

/s/ LEOTI V. KRONE,
Clerk.

A true copy. [117]

In the Supreme Court of the Territory of Hawaii,
October Term, 1949

Nos. 2680 and 2681

TERRITORY OF HAWAII

vs.

CLARENCE C. CAMINOS

Error to Circuit Court, First Circuit,
Hon. A. M. Cristy, Judge

Argued June 14, 1950. Decided August 28, 1950.

Kemp, C. J., Le Baron and Towse, JJ.

Criminal Law—bribery—specific intent.

Where an indictment charging the defendant with receiving a bribe is framed in the language of the statute alleging a specific corrupt intent, proof of that question is thereby placed directly in issue.

Criminal Law—evidence—admissibility of other separate and independent crimes or attempted crimes of bribery.

Under an indictment charging the defendant with receiving a bribe, evidence of other separate and independent crimes of bribery or attempted bribery committed by the defendant at or about the same time and not too remote, is admissible upon the issue of the particular intent, knowledge or purpose of the defendant

with respect to the crime for which he is on trial. [119]

Criminal Law—evidence—degree of proof of other separate and independent crimes.

Proof of the defendant's guilt of other separate and independent crimes than that for which he is on trial is sufficient if the evidence thereof proves or tends to prove the defendant guilty of the commission of such other crimes. The evidence need not of itself establish the defendant's guilt of those crimes beyond a reasonable doubt. [120]

OPINION OF THE COURT BY TOWSE, J.

Following trial by jury upon two consolidated indictments of seven counts, each charging the receipt of bribes, the defendant was found guilty and sentenced to aggregate terms of imprisonment and fines of ten years and \$5,000, respectively.

The first count of the first indictment alleged: "That Clarence C. Caminos, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on or about the 18th day of August, 1945, he, the said Clarence C. Caminos, being then and there an executive officer, to wit, a duly commissioned, appointed and acting police officer of the Police Department of the City and County of Honolulu, Territory aforesaid, in disregard of his office as a police officer, and perverting the trust reposed in him, and for the private gain of him, the said Clarence C. Caminos,

under color of his office, did, unlawfully, corruptly, wilfully and feloniously take, accept and receive of one Paul Au, then and there being, the sum of Nine Hundred Dollars (\$900.00) in money, a more particular description of which is to the Grand Jury unknown, as a bribe, gift and gratuity under an agreement and with an understanding that he, the said Clarence C. Caminos, would not, in the exercise of his function in his capacity, as a police officer aforesaid, apprehend and arrest the said Paul Au, Alfred B. T. Choy and Robert Hosoi, also known as Harry Hosoi, and divers and sundry other persons, to the Grand Jury unknown, for conducting, carrying on, playing and engaging in gambling and gambling games in the City and County of Honolulu, in violation of and [121] prohibited by the laws of the Territory of Hawaii, which matter of the said apprehension and arrest was then and there pending and which might by law come and be brought before him, the said Clarence C. Caminos, in his official capacity aforesaid, and did then and there and thereby commit the crime of receiving a bribe, contrary to the form of the statute in such case made and provided."

Except as to the date of the receipt of the alleged bribe and the amount thereof, the other four counts of the indictment are laid in the same words as the first count.

The first indictment alleges payments and the receipt of bribe moneys paid to the defendant during the period August 18, 1945, to and including September 16, 1945, at seven-day intervals. The

dates and the amounts laid in the respective counts are:

Count 1, on or about August 18, 1945, the sum of \$900; count 2, on or about August 25, 1945, the sum of \$500; count 3, on or about September 2, 1945, the sum of \$2,000; count 4, on or about September 9, 1945, the sum of \$500; count 5, on or about September 16, 1945, the sum of \$900.

The second indictment contains two counts and is laid in the same words as the first indictment. Count 1 alleges receipt of \$3,900 on or about January 6, 1946; count 2, the receipt of \$2,100 on or about January 13, 1946.

The crime charged in each of the seven counts is defined in section 11071 of Revised Laws of Hawaii 1945, as follows:

“Every executive, legislative, judicial or civil officer, or any master in chancery, or any person acting or summoned as a juror; or any appraiser, referee, arbitrator or [122] umpire, who corruptly accepts any gift, gratuity, beneficial service, or act or promise of either, under an agreement or with an understanding that he shall in the exercise of any function in his capacity as aforesaid, vote, decide, or act in any particular manner in any cause, question, proceeding or matter pending or that may by law come or be brought before him, shall be punished by imprisonment at hard labor not more than five years, or by fine not exceeding one thousand dollars.”

The seven separate crimes are temporarily laid as consecutive weekly bribe payments during two

periods; the first period, the latter part of the year 1945; and the second period, during the month of January, 1946. Though not alleged in either indictment as a continuing offense, the theory of the prosecution and the evidence in support thereof were both of that nature and character. All seven counts being identical in terms and verbiage, except as to dates of the separate specific offenses and amounts, the two indictments were consolidated for trial for the reason, *inter alia*, that in each indictment the same persons were involved in what appeared to be one single transaction of bribe giving and bribe taking.

Upon conviction under each indictment writs of error issued. A motion to consolidate the causes in this court was granted. There are forty-six assigned errors in each case. Of these seventeen are relied upon and, as consolidated, will be considered jointly.

Assignment of errors numbered 20, 21, 22, 23 and 24, being specified errors relied upon numbered 4, 5, 7, 8 and 9, are directed to the receipt in evidence of the testimony of [123] five witnesses on behalf of the Territory of Hawaii. The plaintiff in error alleges prejudicial and reversible error in the admission of their testimony upon the ground that the testimony constitutes evidence of the commission, by the defendant as well as by another person, of other separate and independent crimes than that for which he was then upon trial.

We have meticulously reviewed the record, considered all the specifications of errors relied upon, and conclude that it is upon specified errors num-

bered 4, 5, 7, 8 and 9 that disposition of the two causes rests. We find no merit in the contentions urged in respect of the other specifications, and that no error was committed by the trial court in respect of the remaining twelve.

We are not here concerned with the rule of evidence permitting inquiry of a witness of prior criminal convictions as affecting his credibility or the weight of his testimony. The question presented is whether the admission in evidence of the testimony of the five witnesses as proof of the commission by the defendant of separate independent crimes, other than those for which he was indicted and tried, constituted prejudicial and reversible error under the facts presented by the record. The substance of their testimony was:

The witness Thomas G. Rodenhurst testified that in the month of November, 1945, he was a lieutenant in the Honolulu Police Department in charge of the Pearl City police station, and the defendant was captain of the vice squad in Honolulu; that the defendant came to Pearl City and approached the witness upon the subject of assisting him, the defendant, in establishing cockfighting under police protection in that [124] district. He assured the witness that "you'll get yours." The cockfighting was to be transferred from district to district thereafter to evade detection. Defendant was to make all arrangements with the witness' superior officers in the country district. The witness testified that he would have no part of the scheme, and refused to participate.

The witness Lawrence C. Loo, an admitted professional gambler, testifying under immunity from prosecution, corroborating the testimony of William C. Clark, the principal witness for the prosecution, stated that he operated a gambling game in Honolulu during the months of August and September, 1945, until the early part of 1946; that on behalf of the establishment he paid William C. Clark, a police sergeant on the vice squad then serving under the defendant, the sum of \$700 per week for protection against vice squad raids. He further testified that he collected the sum of \$700 per week from another professional gambler in Honolulu during the year 1945 and also gave this money to Clark for the same purpose. The witness was not an owner or partner in the latter establishment, but acted only as a messenger for delivery of the money to Clark without remuneration, and as an accommodation to the owner. The payments were made under an arrangement whereby the witness met Clark each week and gave him the sum of \$1,400 in currency in two rolls of \$700 each. These payments continued for a period of ten months.

The witness Richard Kazuo Mikami, on rebuttal, testified that during the months of November and December, 1945, he was employed at a service station in Pearl City at which the defendant purchased gasoline; that on one occasion at the service station in the month of November, 1945, he gave the sum of \$200 to the defendant for prior rental of the defendant's [125] beach cottage at Mokulei, Oahu. He had occupied the cottage for a time during the

years 1943 and 1944. This witness could not recall whether at the time of tender of the \$200 he told the defendant that the money was for police protection in operating a gambling game in the rear of the service station. The prosecution was apparently surprised at this failure of recollection. Thereupon attempt was made to impeach the witness by a showing that he had in fact told this to the defendant in making a prior inconsistent statement in the office of the public prosecutor. The witness, however, maintained that he tendered the sum for rental of the beach cottage, the defendant initially refusing to accept it but later doing so. He further maintained that the payment was not in connection with gambling of any nature.

The witness Jose Tantog, on rebuttal, testified that he had known the defendant since the defendant had arrested him for conducting a gambling game in his home; that he had been maintaining this game for a week prior to arrest; that he thus first met the defendant in November or December in the year 1944; that he gave the defendant \$20 on one occasion and other small sums on three or four other occasions when the defendant came to his home with other police officers in the year 1944 while he was conducting gambling games in his home. He testified that the defendant had arrested him even after he had made these payments. The witness further testified that in the latter part of the year 1944 or early 1945, he gave the defendant a twelve-foot boat after the defendant had offered to purchase it and he had refused to accept payment. [126]

The witness Catalino Prioprios, an admitted professional gambler engaged in cockfighting, on rebuttal testified that he had known the defendant since the year 1942; that the defendant had told him to run gambling games (assumedly cockfighting) and charged him \$25 each week for one year, commencing in 1943. The witness periodically made these payments directly to the defendant at the witness' home. The defendant was a lieutenant stationed at the Wahiawa police station at the time, and had arrested the witness many times (more than the witness could recount) for gambling and cockfighting during the years 1943, 1944 and 1945.

The rule firmly established in policy, tradition, and law, is that evidence, the purpose of which is to prove that a defendant on trial for one crime has committed other separate and independent crimes, is inadmissible. The purpose of the rule is to forbid and prevent the conviction of an accused for one crime by the use of evidence that he has committed other crimes, wherefrom the inference may be drawn that because he had committed other crimes he was more liable to commit the crime for which he was indicted and tried.

"The fundamental principle is that evidence must be relevant to the facts in issue in the case on trial and tend to prove or disprove such facts; evidence as to collateral facts is not admissible. Accordingly, as a general rule, evidence of other acts, even of a similar nature, of the party whose own act or conduct or that of his agents and employees is in question, of other similar transactions with which he

has been connected, of a former course of dealing, of his conduct or that of his agents and employees [127] on other occasions, or of his particular conduct upon a given occasion is not competent to prove the commission of a particular act charged against him, unless the acts are connected in some special way, indicating a relevancy beyond mere similarity in certain particulars. This rule obviously excludes evidence of all collateral facts or of those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute. Thus, as a general rule, proof that the accused in a criminal case has committed another and separate offense is not competent for the purpose of proving that he is guilty of the offense with which he stands charged. * * * The general rule has long been established that *res inter alios acta* are incompetent evidence. The rule is not, however, confined to transactions with which one of the parties is not connected, but includes similar transactions between the same parties." 20 Am. Jur., Evidence § 302, pp. 278-281, and cases cited in footnotes therein.

"The general rule, which is subject to exceptions * * * is that on a prosecution for a particular crime, evidence which shows or tends to show that accused has committed another crime wholly independent of, and unconnected with, that for which he is on trial, even though it is a crime of the same sort, is irrelevant and inadmissible, and such evidence of an independent crime is inadmissible for the reason, among others, that it ordinarily does not

tend to establish the commission by accused of the offense charged, that accused must be tried for one offense at a time, and that, in accordance with the more extensive general rule, [128] which applies to all cases, civil or criminal, the evidence must be confined to the point in issue * * *.

“Another view of the principle is that it is not competent to prove one crime by proving another, and that one accused of crime is to be convicted, if at all, by proof of the commission of that crime alone, even though he has put his character in issue. Proof that accused committed other crimes, even if they were of like nature to that charged, is not admissible to show his depravity or criminal propensities, or the resultant likelihood of his committing the offense charged; nor may such evidence be offered if it only tends to create a prejudice against accused in the minds of the jury.” 22 C. J. S., Criminal Law § 682, pp. 1084-1089, and cases cited in footnotes therein.

As in the case of any general rule, however, exceptions have been engrafted which do, in certain circumstances and for specific limited purposes, permit evidence of the commission by the accused of crimes other than the one for which he is being tried. The exceptions are numerous. Their proper application is scrupulously safeguarded. When properly applied they are conducive to justice, but should not be so extended as to destroy the rule. The exception applicable to the instant cases relates to the admissibility of the testimony in question as probative of the corrupt intent which is in issue as an essential element of the crime charged.

“Whenever mental state, guilty knowledge, or scienter is an essential element of the offense charged, evidence is admissible of acts committed by the accused and his conduct [129] at or about the time of the commission of the offense charged against him which tend to establish his knowledge or intent, his motive for the commission of the crime, the absence of mistake or accident or of a common scheme, plan, or system on his part, notwithstanding such evidence proves or tends to prove an offense other than that charged.” 20 Am. Jur., Evidence § 313, pp. 293-295, and cases cited in footnotes therein.

“As a general rule, evidence of other offenses committed or attempted by accused is admissible to show, or when it tends to show, his criminal intent or purpose with respect to the offense charged, as tending to show his guilt thereof, and proper evidence which proves or tends to prove the particular intent is not to be excluded because it incidentally discloses the commission of an independent crime by accused, or an attempt or threat to commit one. More precisely, such a rule has been applied where the other offenses are of the same or a like nature, and were committed at about the same time, or at a time not too remote, where intent is in issue or is an essential or material element of the offense charged, where the other offenses are part of the same transaction as the one charged, or are so connected or related to it as to show intent or to have some tendency to prove its commission, or are so related that the mental state involved is practically continuous

* * *.” 22 C. J. S., Criminal Law § 686, pp. 1100-1105, and cases cited in footnotes therein.

The exception, *supra*, is applicable where it conforms to all the prerequisites of its admissibility in a trial where the specific crime charged is that of receiving a bribe. [130]

“In prosecutions for bribery, as in prosecutions for other offenses, the rule is that evidence which shows or tends to show that the accused has committed another crime independent of that for which he is being tried is inadmissible. The rule is merely an application of the general rule which restricts the evidence of facts relating to the point in issue and excludes evidence of collateral matters. There are several exceptions to the rule, however. In accordance with these exceptions, evidence of other crimes is admissible in prosecutions for bribery where it shows knowledge, intent, plan or system, etc., in the commission of the bribery.” 8 Am. Jur., Bribery § 32, p. 903, and cases cited in footnotes therein.

“* * * but evidence of acts similar to the one relied on, intimately and directly connected with the particular accusation, is relevant, forms part of the same transaction, and is material to illustrate the knowledge and intent with which the particular act was committed, and rebut inferences of any honest intent or purpose.” 11 C. J. S., Bribery § 14 (b), pp. 869, 871.

The testimony constituting specified errors 4, 5, 7, 8 and 9 was admitted under an assertion of materiality and competency under the indictments, as

showing intent, scheme, general plan and relationship of the defendant to the particular type of crimes for which he was on trial.

That evidence of the commission by the defendant of separate and independent offenses of a kindred nature, where the intent of the accused is in issue is admissible, has been heretofore determined by this court in the following cases wherein the precise question was presented: [131]

In the case of *Ter. v. Chong Pang Yet*, 27 Haw. 693, the offense charged was the issuance of a check by the defendant without sufficient funds in the bank. The defendant admitted giving the check in question to the complaining witness, further admitting that at the time he knew he had neither funds in nor credit with the bank sufficient to honor the check when presented. The defendant testified that when he gave the check in question to the complaining witness he told him he had no funds in the bank and that he had agreed to withhold presentation of the check until a later date. This was denied by the complaining witness. The defendant denied that he had any intent to defraud the complaining witness in giving him the check. Upon cross-examination the defendant admitted that, although knowing he had insufficient funds in and no credit with the bank shortly before giving the check complained of he had given several other persons checks upon the same bank. The prosecution was thereupon allowed to question the defendant as to whether on a previous occasion he had issued a check on another bank not having sufficient funds or credit therein to

honor the check. On appeal, the defendant in error contended that the admission of the testimony upon the tender of the prior check on another bank was erroneous and prejudicial and that it had no bearing upon the issue.

This court, in determining the issue, stated:

"In the case at bar the charge against defendant is that he gave the worthless check with intent to defraud the payee. The question of fraudulent intent was directly in issue and the evidence complained of was therefore [132] relevant and admissible as tending to show that intent. As was said by the Supreme Court of the United States speaking through Mr. Justice Story in *Wood v. United States*, 16 Pet. 342, 360, 'The question was one of fraudulent intent or not; and upon questions of that sort, where the intent of the party is matter in issue, it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment. Indeed, in no other way would it be practicable, in many cases, to establish such intent or motive, for the single act, taken by itself, may not be decisive either way; but when taken in connection with others of the like character and nature, the intent and motive may be demonstrated almost with a conclusive certainty.' " *Ter. v. Chong Pang Yet*, supra, at pp. 695, 696.

In the case of *Ter. v. Awana*, 28 Haw. 546, the defendant was convicted of the crime of embezzle-

ment. One of the assigned errors was that evidence of similar offenses was improperly admitted for the reason that intent was not a necessary ingredient of the offense charged in the indictment, and that the evidence did not show, beyond a reasonable doubt, that the defendant was guilty of the other similar separate independent offenses.

The indictment charged embezzlement of a single specific sum which, under the theory of the prosecution, was received by the defendant in the course of his official duties as a clerk in the Honolulu Water Works. At the trial [133] other checks, ledger cards, stubs and receipts, evidencing payments by other water consumers to the Honolulu Water Works and embezzled by the defendant prior to the embezzlement charged in the indictment, were admitted in evidence.

This court, in affirming the application of the exception to the rule now before us that the evidence of similar offenses was admissible, stated:

“Evidence of other crimes similar to that charged is relevant and admissible when it shows or tends to show a particular criminal intent which is necessary to constitute the crime charged. That this evidence incidentally proves independent crimes is immaterial. (* * * Territory v. Chong Pang Yet, 27 Haw. 693, 695.) Where a fraudulent intent is an essential ingredient of the crime of embezzlement the rule admitting evidence of other crimes similar to that charged tending to show a fraudulent intent is peculiarly applicable.” Ter. v. Awana, *supra*, pp. 547, 548.

In further findings that the evidence of guilt of the defendant of the separate independent offenses need not be established beyond a reasonable doubt, this court said:

“We prefer the reasoning and the rule enunciated in Commonwealth v. Robinson, 16 N. E. (Mass.) 452, approved and followed in State v. Hyde, 136 S. W. (Mo.) 316, to the effect that the evidence of other crimes similar to that charged need only tend to prove the defendant guilty of such other crimes. The degree of proof required of the prosecution to entitle it to a conviction applies to the offense charged and every essential ingredient thereof. One of the [134] essential ingredients of the embezzlement as charged was a fraudulent intent. Hence the fraudulent intent must be proved beyond all reasonable doubt. It does not follow that a collateral matter from which intent may be inferred must also be proved beyond all reasonable doubt. To require such a degree of certainty would be unreasonable and cast a burden upon the prosecution in excess of what the protection of persons accused of crime requires.” Ter. v. Awana, *supra*, p. 550.

We are of the opinion that the rule established in the Awana case is directly applicable to the instant appeals. The indictments are framed in the language of section 11071 of Revised Laws of Hawaii, 1945, and allege in part: “* * * the said Clarence C. Caminos, under color of his office, did, unlawfully, corruptly, wilfully and feloniously * * *. The term “corruptly,” as used in the indictments,

means an intent, motive and design by the defendant to pervert the public office and trust reposed in him as a police officer by not performing his official duties and apprehending and arresting those named in the indictments for conducting, carrying on, playing and engaging in gambling and gambling games, in violation of and prohibited by the laws of the Territory of Hawaii.

The defendant, as a witness on his own behalf, denied that he had received any moneys whatsoever constituting bribe payments. This denial, in addition to his plea of not guilty to the indictments, magnetized the question of intent directly into issue, imposing the burden of proof upon [135] the Territory. Being thus required to prove corruptness on the part of the defendant, under the decisions, *supra*, the Territory was entitled to introduce any and all evidence competent and material for that purpose.

Upon review of the testimony of the five witnesses (specifications numbered 4, 5, 7, 8 and 9), we find that their testimony of the separate, independent, kindred offenses is sufficiently related in character, time and place of commission, as to embrace them within the exception to the rule cited *supra* as competent and material evidence upon the issue of intent.

It is too well established to require citations of authorities therefor that evidence of prior, separate, independent offenses may be introduced upon rebuttal. That the testimony of three of the witnesses was introduced on rebuttal is immaterial.

The record discloses ample foundation laid during the testimony of the defendant as a witness on his own behalf, and by other witnesses on behalf of the defense, warranting the admission of the testimony of these three witnesses on rebuttal.

Upon the record we further find that substantial testimony of the commission of the separate independent offenses in question was introduced which tended to prove the defendant guilty of the commission of those offenses.

The testimony, the subject of assignment of errors numbered 20, 21, 22, 23 and 24, was competent and material and its admission was not [136] error.

Upon the record before us, we find the remaining twelve specifications relied upon to be without merit and that no error was committed by the court below in respect of any of them.

The judgments of the trial court are affirmed.

P. A. Lee, O. P. Soares, and F. Patterson (also on the briefs) for Plaintiff in Error.

A. R. Hawkins, Assistant Public Prosecutor (also on the briefs), for Defendant in Error.

/s/ S. B. KEMP,

/s/ LOUIS LE BARON,

/s/ EDWARD A. TOWSE.

[Endorsed]: Filed August 28, 1950. [137]

In the Supreme Court of the
Territory of Hawaii

Nos. 2680 and 2681

October Term, 1949

TERRITORY OF HAWAII,

vs.

CLARENCE C. CAMINOS,

Defendant-Plaintiff in Error.

Error to Circuit Court, First Circuit, Hon. A. M.
Cristy, Judge

JUDGMENT ON WRITS OF ERROR

Pursuant to the opinion of the Supreme Court of
the Territory of Hawaii, rendered and filed on
August 28, 1950, in the above causes, the judgments
of the trial court are affirmed.

Dated: Honolulu, T. H., September 11, 1950.

By the Court:

[Seal] /s/ LEOTI V. KRONE,
Clerk.

Approved:

/s/ EDWARD A. TOWSE,
Associate Justice.

A true copy.

[Endorsed]: Filed September 11, 1950. [139]

[Title of Supreme Court of Hawaii and Causes.]

PETITION FOR APPEAL

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the Territory of Hawaii:

Comes now Clarence C. Caminos, Defendant herein, and deeming himself aggrieved by the Judgment of the Supreme Court of the Territory of Hawaii made and entered on the 11th day of September, 1950, pursuant to the opinion and decision of said Court made and entered on the 28th day of August, 1950, prays that an appeal may be allowed from said Judgment to the United States Circuit Court of Appeals for the Ninth Circuit; that an order be made fixing the amount of costs bond; that a duly authenticated transcript of the record and proceedings upon which said decision and judgment were made be sent to the United States Circuit Court of Appeals for the Ninth Circuit; that a citation issue as provided [141] by law.

Dated at Honolulu, Hawaii, this 11th day of September, 1950.

CLARENCE C. CAMINOS,
Defendant and
Plaintiff-in-Error.

P. A. LEE,
FRED PATTERSON, and
O. P. SOARES,

By /s/ O. P. SOARES,
His Attorney.

City and County of Honolulu,
Territory of Hawaii—ss.

O. P. Soares, being first duly sworn on oath deposes and says that he is of counsel for Clarence C. Caminos, above named; that he has read the foregoing petition and knows the contents thereof and that the same is true, and that the same is filed in good faith and not for purposes of delay.

/s/ O. P. SOARES.

Subscribed and sworn to before me, this 11th day of September, 1950.

[Seal] /s/ TERRY GOMES,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires: 6/30/53.

A true copy.

[Endorsed]: Filed September 15, 1950. [142]

[Title of Supreme Court of Hawaii and Causes.]

ASSIGNMENT OF ERRORS

Now comes Clarence C. Caminos, defendant and plaintiff-in-error above named, by his attorneys, and files the following assignment of errors upon which he will rely in the prosecution of his appeal in the above-entitled matter from the Judgment entered herein on the 11th day of September, 1950,

dismissing his writ of error and affirming the judgments of the trial court below:

Assignment of Error No. I.

That the Supreme Court of the Territory of Hawaii erred in holding that evidence of alleged separate and independent crimes of bribery and attempted bribery and not referred to in any indictment or information was admissible for that by so holding the defendant was deprived of his rights under the Constitution of the United States to a fair and impartial trial; to be informed of the nature of the charges against him; to present evidence on his behalf; and to be protected against another prosecution for the same offense. [144]

Assignment of Error No. II.

That the Supreme Court of the Territory of Hawaii erred in holding (without giving any reason for so holding) that defendant's assignment of error committed by the trial court in denying his motion for a directed verdict, was without merit, for that in so holding defendant was deprived of his rights under the Constitution of the United States to a fair and impartial trial; not to be held to answer except by indictment; and to be protected against another prosecution for the same offense.

Assignment of Error No. III.

That the Supreme Court of the Territory of Hawaii erred in holding (without giving any reason

for so holding) that the defendant's assignment of Error complaining of the prejudicial misconduct of the trial judge as a result of which defendant was denied a fair trial and deprived of the due process of law guaranteed by the Constitution of the United States and the bill of rights therein contained was without merit.

Assignment of Error No. IV.

That the Supreme Court of the Territory of Hawaii erred in holding (without giving any reason for so holding) that the defendant's assignments of error committed by the trial court in refusing to instruct the jury as to the law applicable to the case in certain specified respects as requested by defendant were without merit, for that in so holding defendant was deprived of his right under the Constitution of the United States to a fair and impartial trial and to the equal protection of the laws. [145]

Assignment of Error No. V.

That the Supreme Court of the Territory of Hawaii erred in holding (without giving any reason for so holding) that defendant's assignment of error committed by the trial court in giving the following instruction requested by the prosecution, to wit: Territory's Requested Instruction No. 8: "The court further instructs you, gentlemen of the jury, that if you find from the evidence in this case beyond a reasonable doubt that the defense set up by the defendant is a false and fabricated defense

and was purposely and intentionally invoked by the said defendant then you are instructed that such a false and fabricated defense forms the basis of a presumption against him because the law says that he who resorts to perjury to accomplish an end, this is against him and you may take such action as the basis of presumption of guilt" was without merit, for that in so holding defendant was deprived of his right under the Constitution of the United States to a fair and impartial trial and to the due process of law.

Wherefore, Clarence C. Caminos, defendant and Plaintiff-in-Error, prays that judgment and decision of this cause be reversed and the cause remanded with instructions to discharge the defendant.

Dated at Honolulu, Hawaii, this 11th day of September, 1950.

CLARENCE C. CAMINOS,
Defendant and
Plaintiff-in-Error.

FRED PATTERSON,
PETER A. LEE, and
O. P. SOARES,

/s/ O. P. SOARES,
His Attorneys.

A true copy.

[Endorsed]: Filed September 15, 1950. [146]

[Title of Supreme Court of Hawaii and Causes.]

COST BOND

Know All Men by These Presents:

That Clarence C. Caminos, as principal, and Fong Hing and Leonard K. M. Fong, as sureties, are held and firmly bound unto the Territory of Hawaii in the just and full sum of Two Hundred Fifty Dollars (\$250.00), legal currency of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that:

Whereas, the above bounden principal, Clarence C. Caminos, has filed his Petition for Appeal from the Supreme Court of the Territory of Hawaii to the United States Court of Appeals for the Ninth Circuit from the judgment of said Supreme Court entered on the 11th day of September, 1950.

Now, Therefore, if said principal shall prosecute his appeal with effect and answer for all costs, if he fails to sustain said appeal, then this obligation

shall be void, [148] otherwise it remains in full force and effect.

Sealed with our seals and dated at Honolulu, Hawaii, this 14th day of September, 1950.

/s/ CLARENCE C. CAMINOS,
Principal.

/s/ FONG HING,
Surety.

/s/ LEONARD K. M. FONG,
Surety.

AFFIDAVIT OF SURETIES

City and County of Honolulu,
Territory of Hawaii—ss.

Fong Hing and Leonard K. M. Fong sureties on the foregoing bond, being first duly sworn on oath, depose and say that they are residents of the City and County of Honolulu, Territory of Hawaii, and are each more than twenty years of age; that they have property situate within the Territory of Hawaii subject to execution; and that they are, each and not together, worth the sum of \$250.00 in such property situate within said Territory of Hawaii over and above all their debts and liabilities and property exempt from execution.

/s/ FONG HING.

/s/ LEONARD K. M. FONG.

Subscribed and sworn to before me this 14th day of September, 1950.

[Seal] /s/ MANDELL F. BROOKS,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: July 31, 1951. [149]
The Foregoing Bond Is Hereby Approved as to
Form, Amount and Sufficiency of Sureties.

[Seal] /s/ LOUIS LeBARON,
Justice, Supreme Court,
Territory of Hawaii.

A true copy.

[Endorsed]: Filed September 15, 1950. [150]

[Title of Supreme Court of Hawaii and Causes.]

ORDER ALLOWING APPEAL

The appeal prayed for in the above-entitled matter is hereby allowed upon the filing of a bond in the sum of \$250.00 with good and sufficient surety.

Dated at Honolulu, Hawaii, this 15th day of September, 1950.

[Seal] /s/ LOUIS LeBARON,
Justice.

A true copy.

[Endorsed]: Filed September 15, 1950. [152]

[Title of Supreme Court of Hawaii and Causes.]

CITATION

The Territory of Hawaii,

To Plaintiff and Defendant-in-Error above named,
and to Chas. M. Hite, Esq., Public Prosecutor
of the City and County of Honolulu, Territory
of Hawaii, its attorney:You are hereby cited to appear in the United
States Court of Appeals for the Ninth Circuit in
the above-entitled matter within 40 days from the
date hereof.Dated: Honolulu, Hawaii, this 15th day of Sep-
tember, 1950.[Seal] /s/ LOUIS LeBARON,
Justice.

A true copy.

[Endorsed]: Filed September 15, 1950. [154]

[Title of Supreme Court of Hawaii and Causes.]

NOTICE OF APPEAL

1. Clarence C. Caminos, 1383 Loko Drive, Wa-
hiawa, City and County of Honolulu, Territory
of Hawaii.
2. Peter A. Lee, 313 McCandless Building, Bethel
and King Streets, Honolulu, Hawaii.
Fred Patterson, 308 McCandless Building,
Bethel and King Streets, Honolulu, Hawaii.
O. P. Soares, 1-2 Union Trust Building P. O.
Box 2702, Honolulu, Hawaii.

3. Violation of Section 11071 of the Revised Laws of Hawaii, 1945.
4. Judgment: September 11, 1950.
5. Upon verdict of a jury, defendant adjudged guilty and sentenced to imprisonment at hard labor for a maximum of Years, which judgments were affirmed by the Supreme Court of the Territory of Hawaii from which latter judgment this appeal is prosecuted.
6. Defendant is on bail, the amount and the sufficiency of the sureties, being duly [156] approved.
7. The defendant has been deprived of his rights under the Constitution to a fair and impartial trial; to be protected against double jeopardy; to the due process of law; to be informed of the nature of the charges against him; to present evidence on his behalf; not to be held to answer except by indictment, and to the equal protection of the laws.

Dated at Honolulu, Hawaii, this 15th day of September, 1950.

CLARENCE CAMINOS,
Defendant and
Plaintiff-in-Error.

FRED PATTERSON,
PETER A. LEE, and
O. P. SOARES,

By /s/ O. P. SOARES,
His Attorneys.

A true copy.

[Endorsed]: Filed September 15, 1950. [157]

[Title of Supreme Court of Hawaii and Causes.]

PRAECLYPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above-entitled Court:

You will please prepare transcript of record of this cause to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, and include in said transcript the following pleadings and papers on file, to wit:

I. Indictments.

II. Minutes of Clerk, First Circuit Court on file in this Court.

III. Transcript of shorthand reporters notes of the following:

1. The testimony of the Territory's witness, Paul Au, beginning with the line on page 88 of said transcript which reads:

“Q. Mr. Au, at the time that Captain Caminos came on the——”

and ending with the line on page 98 of said transcript which reads:

“through Bill Clark.”

2. The testimony of the Territory's witness, William K. Clark

(a) beginning with the line on page 167 of said transcript which reads: [159]

“Q. When you first met Paul Au in January, 1945, who was the”

and ending with the line on page 169 of said transcript which reads:

“The Court: Exception allowed.”

(b) beginning with the line on page 182 of said transcript which reads:

“Mr. Lewis: You started to testify, Mr. Clark that when”

and ending with the line on page 183 reading:

“Mr. Lewis: No further questions.”

(c) beginning with the line on page 173 of said transcript which reads:

“Q. What did you do with your money, Mr. Clark.”

and ending with the line on page 174 of said transcript which reads:

“thousand in bonds.”

(d) beginning with the line on page 187 of said transcript which reads:

“Q. That makes your ‘take’ for that year \$39,000.00 from”

and ending with the line on page 189 of said transcript which reads:

“A. That’s right.”

(e) beginning with the line on page 219 of said transcript which reads:

“Q. Now in connection with your payments from these other”

and ending with the line on page 221 of said transcript which reads:

“envelope, it was just dished out to me that way.”

3. The testimony of the Territory’s witness, Thomas G. Rodenhurst:

beginning with the line on page 229 of said transcript which reads:

“Q. During the month of November, 1945, did you see the”

and ending with the line on page 232 of said transcript which reads:

“Mr. Lewis: No further questions.” [160]

4. The testimony of the Territory’s witness, Lawrence Fat Loo:

beginning with the line on page 249 of said transcript which reads:

“Mr. Lewis: Mr. Loo, how did you make a livelihood?”

and ending with the line on page 254 of said transcript which reads:

“Mr. Lewis: No further cross-examination.”

5. The testimony of the Territory’s witness, Richard Kazuo Mikami:

beginning with the line on page 774 of said transcript which reads:

“Q. Mr. Mikami, in the latter part of 1945, in late November,”

and ending with the line on page 809 of said transcript which reads:

“The Court: Motion is denied.”

6. The testimony of Territory’s witness, Jose Tantog:

beginning with the line on page 818 of said transcript which reads:

“Jose Tantog”

and ending with the line on page 825 of said transcript which reads:

“Mr. Lewis: No further questions.”

7. The testimony of Territory’s witness, Catalino Priopios:

beginning with the line on page 839 of said transcript which reads:

“Q. What you do for living then, 1945?”
and ending with the line on page 843 of said transcript which reads:

“Mr. Young: No further questions.”

8. The exchanges between Court and counsel appearing on the following pages of said transcript and there indicated by being inclosed in brackets, to wit:

pp. 73, 102 and 103, 115, 140, 245 and 246, 337 to 339 (inclusive), 362 and 363, 528 and 529, 813 and 814, 830. [161]

IV. Minutes of the Clerk of the Supreme Court of the Territory of Hawaii.

V. Opinion and decision of the Supreme Court of the Territory of Hawaii.

VI. Judgment of the Supreme Court of the Territory of Hawaii.

VII. Petition for Appeal.

VIII. Assignment of Errors.

IX. Cost Bond.

X. Order Allowing Appeal.

XI. Citation.

XII. Notice of Appeal.

XIII. This praecipe.

Said transcript to be prepared as required by law, and the rules of this Court, and the rules of the United States Court of Appeals for the Ninth Circuit, and filed in the Office of the Clerk of said Court of Appeals, at San Francisco, in the State of California.

Dated at Honolulu, Hawaii, this 25th day of October, 1950.

CLARENCE C. CAMINOS,
Defendant and
Plaintiff-in-Error.

FRED PATTERSON,
PETER A. LEE and
O. P. SOARES.

O. P. SOARES,
His attorneys.

A true copy.

[Endorsed]: Filed October 25, 1950.

[Title of Supreme Court of Hawaii and Causes.]

ORDER EXTENDING TIME FOR RECORD

Good cause appearing therefor,

The time during which the Defendant and Plaintiff-in-Error may file the records in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended to include the 14th day of December, 1950.

Dated at Honolulu, Hawaii, this 25th day of October, 1950.

[Seal] /s/ EDWARD A. TOWSE,
Justice.

A true copy.

[Endorsed]: Filed October 25, 1950.

[Title of Supreme Court of Hawaii and Causes.]

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the Supreme Court of the Territory of Hawaii, do hereby certify that the foregoing documents listed in the index hereto attached are full, true and correct copies of the certified copies and of the originals on file in the above-entitled court and cause. I further certify that the excerpts of testimony of the proceedings had in the trial of said cause in the court below are true and correct copies of the original transcript of proceedings filed in the above court and cause. I further certify that all documents and items listed in said index are attached hereto.

I further certify that the cost of the foregoing transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit is \$252.99, and that the said amount has been paid by the attorneys for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the supreme court of

the Territory of Hawaii, at Honolulu, this 8th day of December, 1950.

[Seal] /s/ LEOTI V. KRONE,
Clerk.

[Endorsed]: No. 12769. United States Court of Appeals for the Ninth Circuit. Clarence C. Caminos, Appellant, vs. Territory of Hawaii, Appellee. Transcript of Record. Appeal from the Supreme Court of the Territory of Hawaii.

Filed December 13, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

(Error to Circuit Court, First Circuit, Territory of Hawaii, Hon. A. M. Cristy, Judge, Cr. Nos. 19015 and 19018, Appeal from Supreme Court, Territory of Hawaii, Nos. 2680 and 2681.)

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD

Comes now Clarence C. Caminos, Appellant herein, by and through his attorneys, Fred Patterson, Peter A. Lee, and O. P. Soares, and in compliance with Subdivision 6 of Rule 19 requiring a concise statement of the points on which Appellant intends to rely on the appeal, hereby adopts as the points on appeal the assignment of errors appearing in the transcript of the record, and in compliance with the

rules of this Court pertaining to designation of the portion of the record to be printed, directs that the entire record on appeal as set forth in the Praeclipe heretofore filed with the Clerk of the Supreme Court of the Territory of Hawaii with the request that copies of the record as so designated be prepared and transmitted to this Court, be printed as the record on review.

Dated at Honolulu, Hawaii, this 11th day of December, 1950.

FRED PATTERSON,
PETER A. LEE and
O. P. SOARES,
Attorneys for Appellant,
(Plaintiff-in-Error)

By /s/ O. P. SOARES.

Service admitted.

[Endorsed]: Filed December 13, 1950.